

ALASKA



SMALL PROCUREMENT MANUAL

FOR

CONSTRUCTION PROJECTS

May, 2002 Edition

PREPARED BY

**DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES
(Contracting, Procurement and Appeals)**

INTRODUCTION - GENERAL INFORMATION

Introduction - General Information

Under AS 36.30.015 and 2 AAC 12.740, the Commissioner of the DOT&PF delegates the authority to contract for construction related small procurements to the Department's regional directors and contracting officers, and to certain Delegated Operating Agencies.

AS 36.30.320 establishes the limitations for small procurement construction purchases placing such procurements into categories, each having a monetary limit and its own set of procedural rules. These rules are codified in 2 AAC 12.400.

This Manual sets forth the standards, conditions, and guidelines for small procurements (less than \$100,000) that are construction related.

When certain Policies and Procedures (DPDR's) are herein referenced, they are to be used in conjunction with this Manual. DPDR 10.01.011, Small Procurements, is of particular value - For other DOT&PF policies and procedures (DPDR's) affecting small procurements (generally, Policy & Procedures Manual Chapters 5 & 10) visit:

<http://www.dot.state.ak.us/statewide/pnp/index.html>

Refer to the DOT&PF Professional Services Agreement (PSA) Manual for direction in the procurement of professional services.

Use the DOA Administrative Manual for small procurements that are not construction related

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SMALL PROCUREMENT MANUAL for CONSTRUCTION PROJECTS

Authority: Alaska Statute 36.30.320(a);
Alaska Administrative Code 2 AAC 12.400;
Policy & Procurement, Chapter 10, Procurement and Property

Effective Date: May, 2002

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Solicitation and Award Documents

- DOT&PF Waiver Request for Alternate Procurement Methods _____ Form 25D-026
- Invitation for Quotes for a Small Procurement _____ Form SPC-001
- Small Procurement Quote Submittal _____ Form SPC-002
- Notice of Award / Notice to Proceed _____ Form SPC-003
- Small Procurement - Quote Contact Report _____ Form SPC-004
- Payment Bond (if required by the Contracting Officer) _____ Form SPC-005
- Performance Bond (if required by the Contracting Officer) _____ Form SPC-006
- Alaska Products Preference Worksheet _____ Form SPC-007
- Offerors Questionnaire _____ Form SPC-008
- Quote Results _____ Form SPC-009

Change Documents

- Directive _____ Form SPC-020
- Request for Change Order Proposal - Small Construction
Procurement Contract _____ Form SPC-021
- Change Order _____ Form SPC-022
- Support Information / Backup _____ Form SPC-022A
- Supplemental Agreement _____ Form SPC-023

Inspection and Payment Process Documents

- Inspector's Daily Report _____ Form SPC-030
- Daily Report -- Labor, Equip. and Materials for Time and Mat'ls Work _____ Form SPC-031
- Project Construction Report _____ Form SPC-032
- Certificate of Substantial Completion _____ Form SPC-033

Project Close Out Documents

- Certificate of Final Estimate _____ Form SPC-040
- Completion Report _____ Form SPC-041
- Contractor's Release _____ Form SPC-042

Example Correspondence

Notice Correspondence

Transmittal Letter: Contract Award (optional for use w/ SPC-003)

**Preconstruction Meeting Agenda
Redelegated Contracting Officer's Authority**

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MEMORANDUM

State of Alaska

Department of Transportation and Public Facilities
OFFICE OF THE COMMISSIONER

TO: Distribution

DATE: May 15, 2002

TELEPHONE NO: 465-6990

FAX NO: 586-8365

FROM: Mark O'Brien
Chief Contracts Officer

SUBJECT: New Edition - Small
Procurement Manual for
Construction Projects

Attached is the comprehensively revised Small Procurement Manual for Construction Projects. This latest version supercedes that of the April 25, 1997 edition.

Please discard all previous copies of the Manual.

The Manual and all its forms will soon be accessible electronically from the Department's Procurement website @

<http://www.dot.state.ak.us/>

Attachment

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Dept. of Corrections, Sharon Frascati (269-7349)

SMALL PROCUREMENT MANUAL for CONSTRUCTION PROJECTS

CHAPTER 1: SOLICITATION

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1. Solicitation

1.1 Small Procurement Categories

The small procurement cost categories for construction related solicitations are;

- less than \$ 5,000;
- from \$ 5,001 to \$ 25,000; and
- from \$ 25,001 to \$ 100,000.

At any dollar amount, a written contract is required.

1.2 Category Thresholds

An award may not be made in excess of the specific small construction procurement category initially used - this is because each successive monetary level has more stringent solicitation requirements.

However, subsequent change orders may be granted that do extend the total contract amount above the initially used procurement category (see also Chapter 3, section 3.12, "Changes to the Contract").

An accurate project cost estimate is pivotal to the small procurement process. If the estimate is in error by even a few dollars, it may result in resolicitation.

Exceptions to the \$ 100,000 Procurement Limit

Generally, the \$ 100,000 limit may not be exceeded. However, an exception may be allowed:

- 1) when it is impracticable to issue a competitive sealed bid, and it is in the State's best interest to continue with an award of a small procurement contract; **or**,
- 2) for the issuance of a change order that will exceed the \$ 100,000 contract limitation.

In such instances, the Procurement Agency must submit to the DOT&PF Chief Contracts Officer a Waiver Request for Alternate Procurement Methods (Form 25D-026) prior to proceeding with:

- an award that will exceed the \$ 100,000 small procurement limit; **or**
- an anticipated change to the contract that will take the total contract price over \$ 100,000.

The justification portion of the Waiver Request may address the cost of resolicitation, the impact on Offerors as a result of prices being exposed, or the risks of awarding to someone other than the current Contractor (i. e., interference with another contractor, problems with administering multiple contracts on one small project, etc.).

When requesting approval to proceed with an award exceeding \$ 100,000 via the Waiver Request, check the box that designates the approval is for a "Single Source" contract. Follow the guidelines provided in Chapter 5, Section 5.2 on Waiver submittals.

Include information on the cost estimate of probable change orders so that a total project dollar amount can be anticipated and appropriately considered.

1.3 The Cost Estimate

The estimated cost of the contract must be initially established so that the proper solicitation process is followed. If the estimate is within 20% of the upper dollar limit for one of the small procurement categories, procedures for the next higher cost category should be used. This will prevent not being able to award the contract because the cost estimate was too low.

If, after the quotations have been opened and, considering potential change orders, it is likely that the final contract value will exceed \$ 100,000, the solicitation is best cancelled and the project solicited as a Competitive Sealed Bid.

The Agency's cost estimate need not be held confidential unless the disclosure of the estimated cost would adversely effect the State's ability to obtain the best price. There is currently no regulation, policy or procedure that prohibits a Procurement Agency from divulging its cost estimate before quote opening.

Three acceptable methods of cost estimating are:

- (a) detailed cost breakdowns (preferred).
- (b) estimates based upon historic construction cost data.
- (c) published cost guides.

The cost estimate and the process used must be documented in the procurement file. If all quotes received exceed the small procurement limit, this information will be instrumental in documenting reasons for their next step.

The Detailed Cost Breakdown

1. Solicitation

Cost out the project as if you were quoting on the work yourself. This involves contacting material suppliers, equipment rental yards, specialty shops, etc.

Also, get a good knowledge of all current labor and supervisory rates of pay (see the Department of Labor and Workforce Development, Labor Standards and Safety Division, Wage and Hour Administration, Publication No. 600 for wage rates). The total of material, rental, subcontractor, and labor costs constitute the best estimate of the construction cost.

Then, your total should generally be multiplied by a factor of 1.15 for overhead, which includes bonds, insurance, home office expenses, loan repayments, etc. The resultant number is again then escalated by a factor of 1.10 to 1.15 for contingencies and profit.

Historic Construction Cost Data

Past costs for similar projects also give a good indication of the cost of the proposed work. Adjust historical figures for inflation as appropriate.

Published Cost Guides

If historical data are unavailable, a published cost guide works well. A quality guide will include instructions and a series of cost adjustment factors for materials, supplies, and labor based on project location. Some upward adjustment to prices may be required for Alaska's remote projects.

1.4 Developing the Basic Plans and Specifications

The verbal method of explaining plans and specifications should be avoided. A written document helps minimize confusion and protects both parties in a dispute.

Changes in the Project Scope or Specifications During the Solicitation

Scope

If clarifications, changes, or additions to the project's scope arise during the solicitation, the Procurement Agency must ensure that all Offerors are informed.

This can be done verbally, if verbal quotes are solicited, or in writing, when written quotes are being obtained.

The best way of documenting a scope change is by the written solicitation addendum. Remember that any material change in the project scope must also be incorporated into the eventual contract.

Specifications

Offerors may inquire as to whether their construction methods are acceptable. If the methods are within the guidelines of the specifications, no notification to other Offerors is required.

However, if the specifications must be changed or "loosely interpreted" to allow for an unusual construction technique, then all Offerors must be notified in writing of the allowance.

1.5 The Special Provisions of the Contract

Special Provisions are specifications designed for a particular purpose, or that are limited in range or confined to a prescribed field of action or operation. The Special Provisions take precedence over the Plans, Standard Specifications, and any Standard Drawings.

The Procurement Agency may decide, within the limitations of the State Procurement Code and the DOT&PF Delegation of Authority (as applicable), to modify or add information to the Standard Specifications as required for a specific project. However, the Special Provisions may not be used to change established solicitation or contract procedures.

1.6 Public Advertisement and On-Line Public Notice Requirements

There is no required time for which a solicitation for a small procurement that is construction related must be held open. The time must only be "fair and reasonable."

Posting a notice of solicitation for a small construction related procurement on the On-line Public Notice System **is not required**.

1. Solicitation

If a small procurement is advertised, an online public should also be posted.

1.7 Solicitation Requirements

Procurements less than \$ 5,000

Procurement of construction related goods and services estimated to cost:

- (a) **no more** than \$ 2,500 may be made with the designated State purchasing card (PCARD) without competition.
- (b) less than \$ 5,000 do not require extensive documentation. The only requirement is that purchasing Agencies *"use reasonable and adequate procedures and make records that facilitate auditing of the purchasing agency"*¹.

If quotes are easy to obtain and require only minimal time and effort, then obtaining several quotes would be considered "reasonable."

As the value of the time and effort to obtain the quotes approaches the value of the proposed contract, then obtaining fewer quotes would be considered "reasonable."

- **State Purchasing Cards (PCARD)**

The use of the PCARD for construction related goods and services is appropriate only when the price is firmly established in advance of the procurement.

For example, the purchase and full installation of a dishwasher for a fixed price, lump sum amount is allowed. However, it is not appropriate to purchase the same dishwasher with installation paid hourly or under a "not to exceed" amount.

Procurements from \$ 5,001 to \$ 25,000

Procurements from \$ 5,001 to \$ 25,000 require that at least three potential contractors be contacted for

verbal quotes, and that the solicitation process be fully documented.

In advance of soliciting quotes, the Procurement Agency must prepare a written description of the required work to be read to each prospective Offeror. After each prospective Offeror has been read or otherwise receives the scope of services, the Quote Contact Report (Form SPC-004) is typically filled out and made a record in the procurement file. If the Agency's project cost estimate exceeds \$ 2,000 and prevailing wages are required under AS 36.05.010, the Department of Labor and Workforce Development, Labor Standards and Safety Division, Wage and Hour Administration, Minimum Wage Pamphlet No. 600 must be referenced in the solicitation. This pamphlet is available from the Department of Labor and Workforce Development, Wage and Hour Division (see Section 1.11 of this chapter for the addresses of the regional Wage and Hour Administration Offices).

The Procurement Agency must inquire of the Offeror's qualification for the Alaska Offeror's (Bidder's) Preference and of their intended use of Alaska made products. If the Offeror intends to claim a product preference, they must fill out and submit Form SPC-007 (or a similar document) with their quote.

If obtaining quotes by Fax, ensure (by follow up calling) and then document to the file that all Offerors have received the entire Quote Package.

Procurements from \$ 25,001 to \$ 100,000

Procurements from \$ 25,001 to \$ 100,000 require that at least three potential contractors be contacted in writing for a written response, and that the results of the solicitation be fully documented.

The use of the Invitation for Quotes (Form SPC-001) and the Small Construction Procurement Notice of Award / Notice to Proceed (Form SPC-003) must be used for all procurements from \$ 25,001 to \$ 100,000 (Forms other than SPC-003 that contain similar information will also suffice).

The Quote Package may be sent and received by Fax. If Faxed, assure and document that all Offerors receive the entire Quote Package.

Filling Out the Quote Form

¹ 2 AAC 12.990(a)(17) defines "reasonable and adequate procedures" as ". . . procedures that ensure fairness to potential bidders and competition commensurate with the circumstances of the procurement considering price, mission requirements, and available competition. In some circumstances, reasonable and adequate procedures may mean contacting only one potential bidder."

1. Solicitation

The Invitation for Quotes, Form SPC-001, is self explanatory and prompts the Procurement Agency to fill out all necessary information. However, some additional comments are warranted:

- The "Scope of Work" is the legal explanation of the services sought. Work that is not clearly and completely defined may create frustrations and legal difficulties.

References in the "Scope of Work" to drawings and specifications that are to be a part of the contract are required. Any special requirements for certificates, licenses, or authorizations must also be explained -- for example, proof of a manufacturer's authorized installer, electrical or plumbing fitness card, asbestos worker certification, etc.

- The date or number of days to complete the contract, the project cost estimate and the required insurance coverage's must be specified.
- By statute, Worker's Compensation Insurance coverage is generally required (except for commodities only contracts).

Written quotes under the \$ 25,001 procurement category may be returned:

1. by mail,
2. by Fax, or
3. hand delivered.

The State Procurement Code and common sense dictate that the following handling procedures be followed on quotes from \$ 25,001 to \$ 100,000:

- (a) Upon receipt of a written quote, place on the quote (or envelope if sealed) the date and time of receipt, and initial it.
- (b) If the quote is received by Fax, fold and staple the quote to conceal its contents and place on the exterior of the Fax the date, time and your initials (**Caution** - do not rely on the date and time printed on the Fax itself, as that text is generated at the sending

location and is not "receipt" accurate).

- (c) Envelopes marked as a quote must not be prematurely opened. If prematurely opened, the entire quote, including its envelope, should be placed in another envelope, noted as a quote, and sealed. The events surrounding the unintended opening must be documented and made a part of the procurement file.
- (d) All written quotes should be held at a secure location. An observer should be present to witness the opening of quotes. Avoid commingling quotes.
- (e) 2 AAC 12.400 requires a record be kept of entities contacted or that received quote documents. If a contact did not respond, responded late, or was nonresponsive, the record must so note. The record must also summarize the quotes received and the apparent low Offeror (see DPDR 10.01.011).

1.8 Electronic Solicitations and Responses

Electronic Solicitations and solicitation responses are acceptable. Though posting a notice of solicitation for a small procurement on the On-line Public Notice System is not required, that medium may be used, if desired.

1.9 Confidentiality of a Response to a Solicitation

The names of firms or persons solicited, the number of offers received, or information regarding the offers must not be released until after award.

1.10 Rejection of Quotes

The authority to cancel or reject all quotes rests with the Procurement Agency Procurement Officer.

1. Solicitation

1.11 Department of Labor Notification

Any construction related project award in excess of \$ 2,000 must be reported to:

- The Department of Labor and Workforce Development, Labor Standards and Safety Division, Wage and Hour Administration ².

A transmittal letter/memo of information about the award, or a copy of the Notice of Award / Notice to Proceed, Form SPC-003 must be sent to Labor. If transmitting an award notification letter, it must contain:

- (a) Contractor name and address;
- (b) Project name and location;
- (c) Contract award date and contract amount;
- (d) Names of any known subcontractors; and
- (e) A brief description of the work.

**Department of Labor and Workforce
Development, Labor Standards and Safety
Division, Wage and Hour Administration Offices**

Anchorage

Chief/Labor Standards & Safety
3301 Eagle St., Suite 301
P.O. Box 107021
Anchorage, Ak 99510-7021
Phone: 907.269.4914
Fax: 907.269.4992

Fairbanks

675 7th Avenue, Station I
Fairbanks, Ak 99701-4596
Phone: 907.451.2886
Fax: 907.451.2885

Juneau

1111 West 8th St., Suite 302
P.O. Box 20630
Juneau, Ak 99802-0630
Phone: 907.465.4842
Fax: 907.465.3584

² Certified Wages - On awards that exceed \$ 2,000, inclusive of labor and materials, confirm with the Wage and Hour Administration which of their documents must be made a legal part of the contract.

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CHAPTER 2: AWARD

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1. Award

2.1 The Selection Process

Handle all quotes in the same manner. Offerors question an Agency's integrity when they see inconsistency in solicitation procedures.

Use of the forms and letters from Chapter 5 will assist in consistency of practice and serve to provide written documentation when required. These forms are "suggested use" but may be supplemented by other Agency forms that best meet the need, as long as those other forms are in accord with AS 36.30.

Contractor Qualifications

The need for specialized equipment or training requirements are generally project specific and should be addressed in the project's scope of work.

Confirm that the prospective Contractor is appropriately qualified before making the award.

Determining the Lowest Offer

Determination of the lowest offer is made in accordance with the provisions stated on the Invitation for Quotes, Form SPC-001, page 2, *Instructions to Offerors*.

Solicitations consisting of a basic quote and alternates must be carefully checked prior to determining the successful Offeror. See Section 2.2 for an understanding of the impact of Additive Alternates.

Remember, preferences must be applied when determining the lowest quote (see Section 2.3).

2.2 Considering Additive Alternates

The Impact of Additive Alternates

If the Procurement Agency's estimate for the basic quote plus additive alternates are totaled AND that total exceeds

\$ 100,000, then the small procurement Procurement process is invalid - the competitive sealed quote procurement method must be used, as the following examples explain (funding availability is \$ 95,000):

The Agency's Project Estimate is:

<i>Basic Quote Amount - Construct Prison Addition as designed</i>	<i>\$ 75,000</i>
<i>Additive Alt. #1, upgrade security systems, as defined</i>	<i>\$ 8,000</i>
<i>Additive Alt. #2, upgrade mechanical systems, as defined</i>	<i>\$ 8,000</i>
<i>Additive Alt. #3, pave parking areas, as defined</i>	<i>\$ 10,000</i>
<i>Additive Alt. #4, landscaping options, as designed</i>	<i>\$ 10,000</i>
<i>Estimate for the Total Project</i>	<i>\$ 111,000</i>

The preceding example project, even if additional funds could be found, CANNOT be solicited under small procurement [AS 36.30.320(a) and 2AAC 12.400(d)] because the estimate exceeds the upper procurement limit.

However, if the project can be scaled back to eliminate the need for two of the additive alternates (any two Additives could be chosen for elimination - lets use paving and landscaping) the estimate would be as follows:

For the Revised Project, the Agency's Estimate is:

<i>Basic Quote Amount - Construct Prison Addition as designed</i>	<i>\$ 75,000</i>
<i>Additive Alt. #1, upgrade security systems, as defined</i>	<i>\$ 8,000</i>
<i>Additive Alt. #2, upgrade mechanical systems, as defined</i>	<i>\$ 8,000</i>
<i>Estimate for the Total of the Revised Project</i>	<i>\$ 91,000</i>

Now assume the scaled back Project has gone through solicitation under the small procurement process and the quotes received appear as follows:

<i>Quote (Items of Work)</i>	<i>Offeror A</i>	<i>Offeror B</i>	<i>Offeror C</i>
<i>Basic Amount, Construct Prison Addition</i>	<i>\$ 78,000</i>	<i>\$ 72,000</i>	<i>\$ 84,000</i>
<i>Additive Alt. #1, upgrade security systems</i>	<i>\$ 25,000</i>	<i>\$ 24,000</i>	<i>\$ 9,000</i>
<i>Additive Alt. #2, upgrade mechanical systems</i>	<i>\$ 14,000</i>	<i>\$ 20,500</i>	<i>\$ 37,000</i>
<i>Total Basic plus all Alternates</i>	<i>\$ 117,000</i>	<i>\$ 116,500</i>	<i>\$ 130,000</i>

Prior to the opening of quotes, the methodology of the award and the amount of available funding must be announced publicly. This may be accomplished by providing the information in the quote documents or at the time of a scheduled opening when Offeror's attend. In all cases, the award methodology shall be stated as "the award will be made on the basis of the basic offer plus alternates, in the order listed and to the extent of available funding, and within the limit for Small Procurement established by the State Procurement Code."

The amount of available funding must always be announced as the smaller of:

- the available funds, or
- the maximum permitted under the solicitation process. Given the preceding, the award must be made to Offeror C, whose combined total quote within the small construction procurement monetary limit is \$ 93,000 (covering the basic + Alt. #1). Alternate #1 cannot be skipped over, as this would displace the low Offeror.

Similarly, the award could not be made to Offeror "B" based solely on the amount of the basic amount, since it is a requirement that, "award will be made on the basis of the basic offer plus alternates, in the order listed and to the extent of available funding.." Only an award to Offeror "C" satisfies all of the requirements.

2.3 Bidder, Product, and other Preferences

State Funded Projects

State funded small procurements are subject to the applicable Alaskan Bidder and Alaskan products preferences of AS 36.30, and 2 AAC 12.260(d).

The Bidder's (Offeror's) preference is applied first and the Alaska products preference second. Additional preferences are applied in the order that they appear in AS 36.30.170.

Federal Highway Administration (FHWA) Funded Projects

The FHWA requires that nondiscriminatory bidding (quote) procedures be afforded to all qualified Bidders (Offerors) and forbids the application on federal-aid projects of any provisions of state laws or regulations that are discriminatory [23 CFR Ch 1 (4-1-96 Edition) Para. 635.112(d)]. Bidder and product preferences are considered by the FHWA to be discriminatory.

State mandated preference programs may not be applied when federal funds are involved, unless the CFRs, supplementing federal documents, or other federal document(s) specifically allow such programs.

Alaska Product Preference

The Department of Commerce and Economic Development (DCED) has the responsibility of certifying Alaska products and maintaining an accepted products list. Once a product has been classified as an Alaska product, State Procurement agencies are obligated to give a Bidder (Offeror) proposing to use that product the applicable preference.

An Offeror desiring to utilize advantages granted under AS 36.30.322 through AS 36.30.328 may do so by noting the selection of an Alaska product on the form entitled Alaska Products Preference Worksheet, Small Procurement Construction Contract, Form SPC-007.

Prospective Offerors typically receive information of the Alaska Product Preferences via the Invitation for Quotes for a Small Procurement (Construction Related), Instructions to Offerors, Form SPC-001.

When requested by the Offeror, the Procurement Agency supplies the Alaska Products Preference Worksheet, Form SPC-007. The Offeror must carefully prepare this document in accordance with its' instructions. The successful Offeror's failure to utilize designated products listed in their quote is subject to the provisions of AS 36.30.330.

Disability Preference (AS 36.30.170(g) & (h))

The Division of Vocational Rehabilitation, Department of Labor and Workforce Development, keeps a list of qualified employment programs, a list of individuals who qualify as persons with a disability, and a list of persons who qualify as employers with 50 percent or more of their employees being persons with disabilities.

A person must be on this list at the time the quote is opened in order to qualify for a disability preference.

2.4 Responsive / Responsible Quotes

A response to a solicitation is generally declared "nonresponsive" when it lacks required information. Verbal quotations should seldom be found "nonresponsive." If the Procurement Agency asks for and receives all the required information, the verbal quote is responsive.

A written response to a solicitation is nonresponsive if it is late, incomplete, modified, conditioned, or contains material oversights.

Examples of material oversights that automatically render a written response as "nonresponsive" are:

- (a) the quote has not been signed ¹.
- (b) the Offeror does not have (as required) an appropriate Contractor's Certificate of Registration (CCR) at the time of quote opening (AS 08.18).

Under AS 08.18.011. Registration required.

(a) A person may not submit a bid or work as a contractor until that person has been issued a certificate of registration by the department. A partnership or joint venture shall be considered registered if one of the general partners or venturers whose name appears in the name under which the partnership or venture does business is registered.

(b) A general contractor may not use a bid or proposal from, award a bid or proposal to, contract with, or allow a person required to be registered under this chapter to work for the general contractor as a specialty contractor unless the person is registered under this chapter.

¹ A signed fax or cover letter accompanying a quote suffices as an acceptably signed submittal.

1. Award

Specialty, Residential, Electrical and Mechanical contractors all must obtain a Contractors Certificate of Registration. This applies in addition to the registration requirements set for A/E and Land Surveyors.

The CCR and its effective date are verified by contacting the Department of Commerce & Economic Development, Division of Occupational Licensing.

- (c) the project specific requirements, due at the time of opening, were absent (e.g., evidence of manufacturer's certification or required licenses were not submitted).

Modified Responses

Modified or conditioned responses are those that unilaterally alter the contract, such as changing the completion time or reducing or increasing the project scope. Modified or conditioned offers not expressly requested must be rejected as nonresponsive.

Errors and Omissions

Responses that contain errors or omissions that affect time, price, or delivery are also nonresponsive and must be rejected.

Errors or omissions that clearly demonstrate the Offeror's intentions and that can be accepted include:

- (a) conflicting "unit" vs. "extended" amounts;
- (b) missing "unit" amounts, but only if the "extended" amount clearly demonstrates what the intended unit price was (i.e., \$ 200 for 100 units yields \$ 2 / unit);
- (c) missing or incorrect "extended" amounts or totals;
- (d) missing or incorrect data such as address, phone number, EIN or SSN; or the
- (e) the failure to acknowledge addenda that do not affect time, price, or contract performance.

Determining Responsibility

In determining responsibility, consider the list found in 2 AAC 12.500, "Standards of Responsibility," and the requirements for:

- Insurance;
- Bonding (when applicable);
- Certified Wages; and

- Other project specific requirements, such as specialized equipment or training.

2.5 Business Licensing Requirements

A State of Alaska Business License is required, regardless of the dollar amount, on all projects that are construction related. The only caveat is that of when that license must be obtained as dictated by the funding source.

State Funded Projects

Each Offeror must be licensed and, if applicable, registered to perform the work of the contract at the time of submitting the quote.

FHWA Funded Projects

When Federal funds are involved, the Business License must be obtained prior to award.

23 CFR 635.110, "Licensing and qualification of contractors", (c) reads:

"No contractor shall be required by law, regulation, or practice to obtain a license before submission of a bid or before the bid may be considered for award of a contract"

Ask for copies of an Offeror's business license and applicable registrations, or verify the existence of these documents with the Department of Commerce and Economic Development, Occupational Licensing Division, before accepting the quote.

2.6 Insurance Requirements

The General Conditions of the Small Procurement Construction Contract, Form SPC-003, Section 8, give the required insurance coverages. More insurance can be required, dependent on the work and conditions to be encountered. Indemnification language, Workers Compensation, and General

Liability and Automobile insurance are always required, regardless of the contract dollar amount.

Worker's Compensation - Employer's Liability

AS 23.30.045(d) requires the Procurement Agency to evidence, prior to contract award, either a certificate of self insurance, a "Workers' Comp" policy, or to obtain a statement that the Offeror is an, *"independent contractor providing services without the benefit of employees."*

If a Contractor fails to timely file insurance certificates or statements, the Notice of Intent to Award should be rescinded.

Increased coverages

On occasion, a project may involve work that could present a serious impact to the health and safety of State employees or the public. On these projects, consult with the Division of Risk Management to determine if specific limits and coverages are necessary.

If specific limits and coverages are needed, they should be announced in the scope of work.

Generally, projects that require additional insurance coverage include those:

- valued in excess of \$ 80,000;
- that involve modifications to a structural component, elevators or escalators, or life and safety systems; and those
- that involve airport runways, highways, or other areas where the construction is immediately adjacent to the traveling public.

2.7 Bonding

For small procurement construction contracts, bonds are at the discretion of the Procurement Officer (AS 36.25.010; AS 36.30.040; AS 36.30.120; 2 AAC 12.810). When a project estimate exceeds \$ 80,000, consider Bid, Payment and Performance bonds.

If a Payment or Performance Bond is to be required, Payment Bond, Form SPC-005 or Performance Bond, Form SPC-006 can be used. Confirm that the Contractor and Surety have properly executed the bond(s).

An individual Surety cannot be accepted as a bid (quote) guaranty (ref. AS 21.09, AS 36.25.010(1), and DPDR 10.02.011, (f) "Errors which are Non-Waivable").

2.8 Debarred Contractors

Prospective Offerors cannot quote if they have been debarred or suspended from contracting with the State (AS 36.30.050). For the "list of Parties Excluded from Federal Procurement and Nonprocurement Programs" go to: <http://epls.arnet.gov/>

The Department of Labor and Workforce Development, Labor Standards and Safety Division, also lists debarred contractors in the Laborer's and Mechanic's Minimum Rates of Pay Pamphlet.

2.9 The Contract Award

Notice of Award / Notice to Proceed (Contracts from \$ 5,001 to \$ 25,000)

The Notice of Award / Notice to Proceed, Form SPC-003, though not technically required on awards between \$ 5,001 and \$ 25,000, should be used.

Notice of Award / Notice to Proceed (Contracts over \$ 25,000)

A copy of the initial Notice of Award / Notice to Proceed document, or similar document, must be provided to all individuals who submit a response to a solicitation that was estimated to be in excess of \$ 25,000 (2 AAC 12.400(d)(2)(B) & (3)).

This document serves a dual purpose of informing unselected Offeror's of their protest rights. The notice may be sent by Fax if confirmation of receipt² to each party is kept in the project file.

Contractor Acknowledged Receipt of Award

The Contractor must sign and date the "acknowledged receipt" blank at the bottom of the Notice of Award / Notice to Proceed and return it to the Procurement Agency.

The Contract becomes effective upon final signature and date of the Procurement Officer. The Contractor

² For confirmation of receipt, call to assure that the fax was received, and record in the file the date, time, and person contacted.

1. Award

shall not proceed with any Contract work until receipt of a copy of the executed Award document.

Notification to the Concurrent Review Engineer

All construction projects as defined by AS 36.30.990(6) are subject to the procedures outlined in DPDR 05.01.050, Appendix "A," Table #1, "Schedule of Reviews."

DPDR 05.01.050, Appendix "A" shows the small procurement procedures and documents that must be reviewed. Reporting requirements to Concurrent Review for small construction procurements are substantially less than that of larger projects. Delegated Operating (i.e., Sister) Agency projects under \$250,000 are not reviewed by Concurrent Review.

Concurrent Review will audit:

- project backup materials;
- payment and other associated documents;
- directives and change orders;
- Federal document submittals (as applicable); and
- the final estimate review report.

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CHAPTER 3: CONTRACT ADMINISTRATION

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3. CONTRACT ADMINISTRATION

3.1 General Information

A good understanding of the information in this chapter is imperative for the proper administration of the small procurement construction contract. These sections provide guidance for the pre-construction meeting discussion and overall contract administration.

Contract Administration Documents

Small procurement contract administration documents include:

- (a) agenda for pre-construction meetings;
- (b) delegation memos;
- (c) memos of approval or denial;
- (d) change documents;
- (e) inspections;
- (f) project "close-out" reports; and
- (g) warranty related correspondence.

Chapter 5 provides use documents and gives examples of notification letters that may be modified to meet the circumstance.

3.2 The Pre-Construction Meeting

Generally, pre-construction meetings are held on projects that are over \$ 25,000, or that are complex. The pre-construction meeting should be held prior to the Contractor beginning any contract work.

The Procurement Agency should keep all necessary file records, and all project personnel should be familiar with the construction requirements before the pre-construction meeting. Much of the information suggested to be shared with the Contractor at pre-construction discussions in this chapter is at the discretion of the Procurement Agency.

Technically, the Contractor may begin mobilization operations, place orders for materials and equipment, acquire necessary permits, and begin scheduling the overall construction process only upon the actual Award of the contract.

Notification and Attendance Requirements

Written notification of the pre-construction meeting must be given to all affected parties (i.e. the Contractor, code enforcement agencies when special conditions warrant their involvement, and the Procurement Agency's project staff) at least 48 hours in advance of the meeting. A longer notification period may be warranted in certain circumstances.

The notice of the pre-construction meeting should include:

- The meeting time and date;
- The location (sometimes preferably at the project site);
- The names of the parties required to be in attendance;
- A brief agenda; and
- A listing of any items or documents that each participant should bring.

The Contractor submits the following documents (as applicable) prior to or at the meeting:

- A progress schedule;
- A list showing anticipated dates for procurement of materials and equipment;
- A list showing all subcontractors and material suppliers;
- A Construction Phasing Plan;
- A Storm Water Pollution Prevention Plan and a Hazardous Materials Control Plan; and,
- A letter designating the Contractor's Superintendent and defining that person's responsibility and authority;

Topics for Discussion

The pre-construction meeting is usually the first face-to-face contact between the Procurement Agency and the Contractor - and it is the time to fully discuss project limitations, requirements, and procedures, and to answer final questions. It is prudent to record the meeting, provide a copy of the recording to the Contractor and, in follow-up, answer in writing any questions not resolved during the meeting.

3.3 Procurement Officer's Authority

The General Conditions portion of the Notice of Award / Notice to Proceed, Form SPC-003, confer to the Procurement Officer the construction authority over many areas. Much of this authority can be redelegated to staff for day-to-day operations.

DPDR 01.01.050 prohibits the further delegation of the Procurement Officer's authority to:

- (1) sign or terminate construction contracts.
- (2) issue a Procurement Officer's Decision.
- (3) adjudicate bid protests.
- (4) issue the letter of Final Project Acceptance.

The written notification of the Procurement Officer's delegated construction authority is generally delivered to the Contractor at the time of the pre-construction meeting. Any subsequent changes in the delegation must also be in writing.

3.4 Contract Clarification

Regardless of how precise the design, questions will arise on the "intent" of the Contract Documents. Discuss the scope of the work, drawings, specifications, and relevant contract language and issues at the pre-construction meeting, and at any time a question arises.

Any request for clarification that will require a modification to the Contract Documents must be handled as a contract change order.

3.5 Acquiring Permits

If the work requires additions or alterations to a building's structural system, electrical circuitry, plumbing, etc., or if the work exceeds a monetary threshold established by local jurisdiction, a building permit or plan review may be required. Confirm this with the local municipal authority having jurisdiction over the project.

It is best to clarify, in the Contract Documents, whose responsibility it is to obtain all necessary permits. The Procurement Agency should ensure that plan reviews and building permits are timely secured, regardless of whose responsibility it is to obtain them.

If the project requires that the Contractor pay permit fees, the amount of such fees should be identified in

the project's "description of work" on the Invitation for Quote form. Include such fees in the project cost estimate.

3.6 Certified Payrolls

In general, all small procurement construction projects (except commodity purchases) in excess of \$ 2,000 (including projects that have been increased by over \$ 2,000 by change order) are subject to the wage rate determinations published by the State of Alaska, Department of Labor and Workforce Development, Labor Standards and Safety Division, Wage & Hour Administration (see Chapter 1, Section 1.11).

The only projects over \$2,000 that are exempted are those with a "scope of work" that closely parallels the type of work specifically exempted by the Wage & Hour Administration.

When the prime Contractor's contract exceeds \$ 2,000, then each subcontract is subject to the Alaska Department of Labor's certified wage requirement. And, each affected subcontract must contain applicable language as found in the Department of Labor and Workforce Development's packet titled "*Laborers' & Mechanics' Minimum Rates of Pay*."

At the pre-construction meeting, the Procurement Agency must inform the Contractor:

- (1) of the "applicability" of certified payroll requirements, if any;
- (2) of the Agency requirement to withhold a portion of the Contractor's payments "as is necessary to pay the rates of wages required by the contract;" and
- (3) to contact the local Department of Labor representative to answer any additional questions.

3.7 Subcontract Approvals

Should the work necessitate subcontract services, item four of the *General Conditions* (Form SPC-003) requires the Procurement Officer's approval of the subcontract prior to the start of the work.

When reviewing subcontracts, ensure that all "subcontract employees" are covered either under the Workers' Compensation Insurance requirements of AS 23.30.045, or as an "Independent Contractor."

Leave verification of field measurements and less critical dimensions to the Contractor.

3.8 Storage of Equipment and Materials

When relevant, discuss where and how materials are to be stored. Require the Contractor to show evidence of General Liability Insurance (see Chapter 2, Section 2.6) -- if it was not done at the time of contract Award -- and then authorize in writing the storage site and its associated limitations.

Advance payment on stored materials should be avoided.

3.9 Approval of Materials, Shop Drawings, and Product Substitutions

Give all approvals in writing. On federal-aid highway projects, under the Federal-aid Project Oversight Responsibility Agreement between the Federal Highway Administration and the Alaska Department of Transportation and Public Facilities,¹ the State may use its' own procedures.

Consult the design engineer if you are unfamiliar with the construction materials or shop drawings.

The Procurement Officer may establish appropriate approval materials, shop drawings and product substitution procedures. When doing so, the Procurement Officer must establish procedures that ensure:

1. all proposed products meet the requirements of the Project.
Consider limiting the number of substitute submittals, as they can be time consuming. In some cases, the opportunity to provide a substitute is controlled by the technical specifications. Check for this restriction.
2. shop drawings conform to the "intent" of the original design.
Construction details that differ from the construction documents must be closely examined by the procurement Agency.
3. overall component dimensions are those identified in the Contract Documents.

¹ This "Agreement" can be found by going to the DOT&PF Statewide Design and Engineering homepage and downloading the Preconstruction Manual, Appendix "A".

3.10 Contractor Schedules

The Contractor should be directed to furnish the following schedules:

Progress or Work Schedules

A simple bar graph that is chronologically synchronized to graphically show the work phases or segments and the time in which each will occur is adequate. The schedule should also show time associated with reviewing, ordering, and shipping materials.

Materials Submittal Schedules

When required, the submittal schedule will identify the material or product, its technical specification reference, the anticipated date(s) that product literature on individual material will be submitted, and the time when the material's approval (or denial) is desired.

3.11 Procurement Agency Inspections

Use of the standardized contract change and inspection documents (Forms SPC-020 through -033 or similar documents) should be on all small procurement construction contracts exceeding \$ 5,000. The Procurement Agency may also define other procedures and schedules that best fit the circumstance.

In this segment of the pre-construction conference, also discuss the jurisdictional authority of all Inspectors (i.e. the Procurement Agency, a State inspector, or a local / city inspector), and the responsibilities of the parties for inspection notifications, inspection attendance requirements, and the preparation and distribution of inspection reports.

Site Visits and Documentation

On-site inspection should occur frequently as they serve to inform the Contractor:

- (a) whether the work is meeting the requirements of the contract,
- (b) of deficiencies in materials or workmanship;

- (c) of unsafe working conditions; or
- (d) to stop work on a specific item of the contract.

Inspections also help determine "if and how much" to pay for work performed (i. e. progress payments).

Exhaustive inspection reporting is not required, but a brief record of what occurred and was said during all inspections is necessary. The following forms serve to record project activities - their use can be invaluable in a legal proceeding (e.g., if the Contractor has kept records and the Agency has not, the Contractor's records of an event stand to prevail):

- "Inspector's Daily Report" - Form SPC-030, "Daily Report - Labor, Equipment, and Materials for Time and Materials Work," Form SPC-031.
- "Project Construction Report," Form SPC-032.

Inspections that reveal work done contrary to the contract requirements, or that may lead to a dispute, must immediately be brought to the attention of the Contractor and documented. Likewise, the Contractor must bring specific concerns over items of work to the Agency's attention for resolution.

Any discussion pertaining to trouble areas should be summarized in the Inspector's Diary. The summary should include a description of the Agency's findings (what was wrong and why), what was communicated to the Contractor, and the Contractor's reply. If the project work was modified verbally by both parties, it must be noted. If the modifications are substantial (i.e. changes that affect contract price, time, or delivery), a change order must be issued.

File in the project records all documents of the inspector's observations or findings (i.e. reports, diary entries, photos, test results, etc.).

Inspections by Others

"Inspections by others" are generally done when there is an occupancy permit, a test for quality control, or as a condition to issuing a manufacturer's warranty.

When an inspection is to be done by a party other than those who are signatories to the contract, the Procurement Agency must oversee that:

- (1) the Contractor has properly arranged for the inspection;

- (2) the independent Inspector is present at the inspection; and
- (3) copies of his eventual report, and any follow up inspection reports are given to the Procurement Agency and the Contractor.

Substantial Completion Inspection

The "substantial completion inspection" identifies work remaining to be done as well as work that has not been properly completed. The date of substantial completion also "starts the clock" on warranty periods, unless otherwise specified. The Procurement Agency typically performs the substantial completion inspection at the Contractor's request.

The Procurement Officer may have design personnel assist in the "substantial completion inspection." This is especially important if the project incorporates technical or specialized work.

A list of deficiencies (i.e. the "punch list") must be prepared by the Procurement Agency or its representative and a copy given to the Contractor. Any revised list must also be given to the Contractor. All listed deficiencies must be corrected before the project is accepted as complete.

The "substantial completion inspection" often delineates when control over the project is transferred from the Contractor to the Agency. Use the "Certificate of Substantial Completion," Form SPC-033, or similar documents, to notify the Contractor of duties and responsibilities that remain as an obligation to the Contractor and those that transfer to the Agency.

Typically covered in this form are the issues of:

- (1) continuation of insurance coverage;
- (2) payment of utilities;
- (3) security of the work site; and
- (4) reiteration of the effective dates for items covered under warranty.

The "Certificate of Substantial Completion", Form SPC-033, is good to give with the inspection "punch list," or the revised punch list.

Final Completion Inspection

The "final completion inspection" marks the end of all physical work required by the Contract. Like the "substantial completion inspection," the "final completion inspection" occurs by request of the Contractor.

The Agency inspects for completeness of the work and the correction of any "punch list" deficiencies. Operation & Maintenance manuals, "as built" drawings, occupancy permits, and warranties are also items of work under the contract that must be considered in this final review.

The Procurement Agency may send a representative or a team to conduct the final inspection. If deficiencies are found, a second "punch list" is developed and distributed.

Issue the following, or similar forms when all work has been satisfactorily completed:

- "Certificate of Final Estimate," Form SPC-040;
- "Completion Report," Form SPC-041; and
- "Contractors Release," Form SPC-042.

3.12 Changes to the Contract

Change Orders

Generally, the following three conditions must be met for a change to qualify as a change order. When a proposed change does not meet all of the following conditions, the use of a Supplemental Agreement needs to be considered:

- 1) There must be a compelling reason to add the work item.
- 2) The additional work must be within the same general Scope of Work as was contracted (or must have been contemplated as an element of the original design - usually as an alternate add-on).
- 3) The work must be within the project limits. Project limits are the property limits of the facility on which the project is located, and any associated utility connections or road improvements.

An example of a change order that could occur apart from the above criteria is a revised payment schedule as may occur on a lump sum contract where a request is made during the course of the work for a partial (progress) payment.

Generally, contract changes (i. e. amendments) up to \$ 100,000 per occurrence may be made under

Procurement Agency approval authority as long as the aggregate of all increases, including the initial contract cost, does not exceed \$ 200,000 (see 2 AAC 12.400 and 2 AAC 12.485(c), and Chapter 1, "Category Thresholds, Exceptions to the \$ 100,000 Procurement Limit," Section 1.2).

All change documents must be fully executed before the Procurement Agency can allow work to proceed.

Change Order Forms

Changes within the scope of the project are typically made by using one or all of the following forms:

- "Directive - Small Procurement Construction Contract," Form SPC-020;
- "Request for Change Order Proposal", Form SPC-021; and
- "Change Order", Form SPC-022.

Unilateral Change Orders

Change orders are most often bilateral. However, "unilateral change orders" may be issued to significantly add work to the contract at contract unit prices, where the added work is essentially the same in character as the original work.

Whenever there is any chance that a Contractor may consider claiming additional compensation for work performed under a "unilateral change order", the Procurement Agency should keep complete and accurate records of all labor, equipment and materials used on that work.

Any time a "unilateral change order" is issued, the Procurement Agency should record the delivery of the document to the Contractor.

Caution

While the use of a "Time and Materials" or "Hourly Rate" change order is permitted under the State Procurement Code, its' use is not recommended.

If a "Time and Materials" or "Hourly Rate" change order is executed, the Procurement Agency must closely monitor the daily activities and costs to ensure that the combined value of the original contract and the daily costs do not exceed the

monetary limits of the solicitation process used to obtain the initial services.

If the combined value reaches the contracts monetary limits, all remaining work under the change order must be stopped.

Constructive Change Orders

Be careful - any conduct by an authorized official that has the effect of requiring a Contractor to perform work different from the original terms of the contract constitutes a "constructive change order," entitling the Contractor to relief under the Changed Conditions clause. Such Agency conduct may be in the form of an affirmative act, a failure to act, or a "*course of conduct*." This action may be in writing, or it may be oral.

A "constructive change order" may be casual or informal (i.e. words such as "order" or "directive" need not have been used).

If such action by the Agency is not quickly followed by a written directive and subsequent change order document, the Agency's failure to correctly advise the Contractor of the change action leaves it open to a potential claim.

Supplemental Agreements

Supplemental Agreements cover any type of change to the contract that is outside the scope of work. If the proposed work is less than \$ 5,000, that work may be given to the project Contractor by Supplemental Agreement.

If the proposed work is estimated between \$ 5,001 and \$ 100,000, use either the Limited Competition Procurement (AS 36.30.305) or Single Source Procurement (AS 36.30.300) method and remember to:

- (a) prepare the "Waiver Request for Alternate Procurement Methods, "Form 25D-026; and
- (b) fully define, in writing, the extent of the proposed additions with a cost estimate and verification of current funding availability.

It is only upon approval of the "Waiver" that the continuation of this process can occur:

- 1) Prepare the Request for Change Order Proposal, Form SPC-021 and;

- negotiate with the Contractor an amount acceptable to both parties;
 - submit Form SPC-021 to the Contractor for completion and signature.
- 2) Prepare (as applicable) the Supplemental Agreement, Form SPC-023.
 - 3) Encumber funds.
 - 4) File the executed agreement and support documents in the project file.

3.13 Early Contract Termination

The termination of a Contract, whether due to poor performance by the Contractor, or for the convenience of the Procurement Agency, should occur only as a last resort.

There are no standard documents for giving a contract termination notice. Each instance must be reviewed by the Attorney General's Office prior to action.

Termination for Cause

A Termination for Cause is done when the Contractor performs poorly, has abandoned the work, or otherwise refuses to continue under the contract.

Efforts to remedy poor quality or defective work and work abandonment should be pursued under the provisions of the Contract. If the Agency takes control of the project and has the work performed under a separate entity agreement, the cost of such work is then deducted from the Contractor's remaining payment(s).

Where the work is abandoned - and the project is under a Performance Bond - the continuation of the project becomes the responsibility of the Surety.

The Surety has the option of:

- performing the work on behalf of the Contractor;
- paying the Agency for the costs of completing the work under another Agency contract; or,
- paying the penal sum under the contract.

Specific steps must be taken to ensure that the Contractor has been given "due process" and proper notice. Extensive documentation must be made by the Procurement Agency of notices, cure letters, change documents, and general correspondence to

establish the Agency's position - consultation with the Attorney General's office early on is prudent.

Termination for "the Convenience of the Procurement Agency"

This situation generally arises when the Procurement Agency terminates a contract because of a funding cut, changes in a program, or other justifiable reason.

Costs the Agency will incur under a Termination for Convenience are typically those of:

- canceling materials "on order" or in transit;
- restocking charges;
- prepaid or return freight charges; and,
- charges for insurance and bonds.

Again, early consultation with the Attorney General's Office is advised to limit legal exposure.

3.14 Warranty Performance

As small procurements generally do not require Payment or Performance Bonds, an Agency's leverage to obtain warranty work is greatly reduced.

If a warranty clause is stipulated in the Contract Documents, discuss its requirements and repercussions with the Contractor at the pre-construction meeting.

Reduce the likelihood that warranty work will be required by ensuring that the project is carefully designed and the work is frequently inspected. At the time of substantial completion, insist that all components of the project be started and tested. When final payment is made, little recourse for getting performance is left.

If the warranty work has not been accomplished within the established time frame, the Procurement Agency must again notify the Contractor to "cure" the problem. This notification must be provided in writing stating what work remains to be done, the time period in which to do the work, and the consequences to the Contractor should the work not be done. If the Contractor will be dropped from future consideration on small procurement contracts, also state that in the "cure" letter.

It is an acceptable practice to document a Contractor's lack of performance and use this record

to evaluate a Contractor on future contracts, or as a basis for no further contact because of poor performance history.

If the work has not been accomplished by the end of the "cure" period, the Agency may proceed to have the work done on its own.

3.15 Other "Project Impact" Considerations

Discuss the Contractor's use of premises, utilities, facility security, and care of existing property. Be sure to cover site access, building access, construction time constraints, and public safety requirements.

Facility Security and Care of Property

At the pre-construction meeting, discuss concerns and requirements of this topic and, if complicated, provide a written description of "dos" and "don'ts".

Expect to check each day for security and property damage. Immediately bring any deficiencies to the Contractor's attention. Repeat offenses should be documented in writing by the Procurement Agency and remedial action taken as required.

3.16 Project and Contract Close-Out

Project close-out occurs when the Contractor, Project Manager, the Inspectors, and the Procurement Agency complete all necessary paperwork, clearances, and documentation of the contract. Only issues of warranties and claims occur after this point.

Examples of contract close-out forms are presented in Chapter 8.

When necessary, notify the appropriate Concurrent Review Engineer that the project is being completed (see Chapter 2, Section 2.9). In some instances, the Concurrent Engineer's approval signature is required on the close-out documents.

Required Contractor Submittals

The Procurement Agency generates the Certificate of Final Estimate, Form SPC-040, and the Contractors Release, Form SPC-042, with the notice of final completion. These forms, when signed by the Contractor, certify the final pay estimate and attest that all subcontractors and suppliers have been paid.

The Contractor must complete and return the forms, or similar ones, along with the request for final payment and all other required submittals.

Obtaining Required Clearances

Prior to final payment and close-out, the Department of Labor and Workforce Development, Labor and Safety Standards Division, Wage and Hour Administration, and the Department of Revenue must clear all construction contracts for payroll and tax encumbrances.

Letters requesting clearances must be sent to both of these entities by the Procurement Agency. Clearance approval can be long in coming, so make these requests shortly after issuing the final completion notice (see Chapter 1, Section 1.11 for addresses and phone numbers for Wage & Hour. Contact your local Revenue office for the name and address of the person to whom to send the release request for tax purposes).

If you receive a notice from Labor or Revenue to not release final payment, notify the Contractor (written form is suggested) that the final contract payment is being withheld by (Agency name) and that the Contractor must resolve the issue with that Agency. Final payment must not be made until Labor's or Revenue's denial is rescinded, in writing.

Partial and Final Payment to the Contractor

Periodic payments should not be necessary on small procurement contracts. On occasion however, the Contractor may request partial payment for materials purchased and stored on the site, or for partial work completed.

When approving a partial payment request, compensate the Contractor for only that portion of work that has been satisfactorily and fully completed.

Final payment is authorized following the review of:

- (a) a signed request for payment (the original invoice) from the Contractor;
- (b) a completed and executed:
 - Certificate of Final Estimate, Form SPC-040 (or similar form);
 - Completion Report, Form SPC-041 (or similar form); and

- Contractors Release, Form SPC-042 & 042(A) (or similar forms), if the Contractor is a corporation)
- (c) an acceptable Department of Labor clearance.
- (d) an acceptable Department of Revenue clearance.
- (e) as applicable, the completion of the final review and close-out process through the Concurrent Review section per DPDR 05.01.050.

***Note:** The Procurement Agency has 30 days to process payment once they receive a valid invoice (AS 36.90.200). After 30 days, any "late" payment is subject to a penalty equal to the legal rate of interest, if the delay is caused by the Procurement Agency. Therefore, the above mentioned clearances need to be requested in a timely manner. If partial payments have been made, the 30 day requirement applies to the final payment.*

SMALL PROCUREMENT MANUAL for CONSTRUCTION PROJECTS

CHAPTER 4: PROTESTS AND CLAIMS PROCEDURES

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4.2	Disputes and Claims	4.1

4. PROTESTS AND CLAIMS

4.1 Protests

Protests of small procurements that are construction related are handled at the Agency Procurement Officer level. (See 2 AAC 12.695 and DOT&PF DPDR 10.01.011).

An interested party must attempt to resolve a dispute on a solicitation or award with the Procurement Agency Procurement Officer. If the attempt is unsuccessful, the party may protest under 2 AAC 12.695.

The protest is to be answered by the official one step above the person who acted as the Procurement Officer on the contract being protested.

There are no provisions for the protest appeal of a construction related small procurement to the DOT&PF Commissioner. If the protester is not satisfied with the decision of the Agency, the protester may proceed directly to the courts.

Copies of all construction related protests of small procurements and a report of the actions taken by the Procurement Agency must be sent to the DOT&PF Chief Contracts Officer within fifteen days of the final administrative decision on the protest.

4.2 Disputes and Claims

The Claim

An aggrieved Contractor must file a contract claim with the Procurement Officer of the Procurement Agency and must certify that:

- it is made in good faith;
- the supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and
- the amount requested accurately reflects the adjustment for which the Contractor believes the Procurement Agency is liable.

A claim must be filed within 90 days after the Contractor becomes aware of the basis of the claim or should have known the basis of the claim, whichever is earlier.

If the dispute or claim cannot be resolved by agreement, the Contractor may seek a remedy by

requesting a written Procurement Officer's Decision (COD). The decision is due within 90 days after receipt of all necessary information from the Contractor.

The time for issuance of the decision may be extended for good cause, if the claim amount is in excess of \$ 50,000 (AS 36.30.620).

All Procurement Agency Procurement Officers' Decisions must be immediately copied to the DOT&PF Chief Contracts Officer.

The Procurement Officer furnishes a copy of the decision to the Contractor by certified mail or other method that provides evidence of receipt. The decision must include a:

- (1) description of the controversy;
- (2) reference to the pertinent contract provisions;
- (3) statement of the agreed upon and disputed facts;
- (4) statement of reasons supporting the decision; and a
- (5) statement in the closing letter of transmittal substantially as follows:

"This is the final decision of the Procurement Officer. This decision may be appealed to the Commissioner of the Department of Transportation and Public Facilities. If you appeal, you must file a written notice of appeal with the commissioner within 14 days after you receive this decision."

The Claim Appeal

The Claim Appeal process is:

1. An Appeal of the COD by the Contractor (now known as the Appellant) must be filed with the DOT&PF Commissioner within 14 days after receipt of the decision (AS 36.30.625).
2. The DOT&PF Commissioner (or designee), within 15 days after receipt of the appeal, may adopt the COD as final without a hearing or direct the matter to hearing (AS 36.30.630(b)).
3. If held, the hearing must occur "promptly" (AS 36.30.670). There is no specific timeframe in which the hearing is to start or end. The hearing

is usually expedited to the extent agreed to by both parties.

4. After hearing, the hearing officer issues a recommended decision in accordance with AS 36.30.675. The DOT&PF Commissioner (or designee) may affirm, modify, or reject the hearing officer's recommendation.

In accordance with AS 36.30.680, the DOT&PF Commissioner issues a written decision within 90 days after all aspects of the hearing have been concluded.

5. A final decision by the DOT&PF Commissioner may be appealed to superior court within thirty (30) days of the receipt of the decision, in accordance with AS 36.30.685 and the Alaska Rules of Appellate Procedure.

SMALL PROCUREMENT MANUAL for CONSTRUCTION PROJECTS

CHAPTER 5: WAIVERS, ALTERNATE & INNOVATIVE PROCUREMENT METHODS AND PUBLIC INTEREST FINDINGS

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5. WAIVERS, ALTERNATE & INNOVATIVE PROCUREMENT METHODS AND PUBLIC INTEREST FINDINGS

5.1 General Information

Alternate Procurements

Alternate Procurements are defined as those that are:

- Emergency;
- Single Source; or
- Limited Competition.

Innovative Procurements

Absent a statutory or regulatory definition for "innovative procurements," we look to the dictionary definition of the key word. As innovative is "*a new idea, method...*," consider the term "innovative procurement" to mean a procurement method other than one specifically defined in statute.

In accord with AS 36.30.308, the Commissioner of the Department of Transportation and Public Facilities must determine in writing:

"that it is advantageous to the State to use an innovative competitive procurement process in the procurement of new or unique requirements of the State, new technologies, or to achieve best value" (see also 2 AAC 12.575 and 2 AAC 12.577).

Requests to Use Alternate or Innovative Procurement Methods

All small procurement construction related alternate or innovative procurements require the completion and approval of the DOT&PF Waiver Request for Alternate Procurement Methods, Form 25D-026, before solicitation. Waiver Requests are processed in accord with DPDR 10.01.040.

The Waiver Request is approved by either the Procurement Agency official or the DOT&PF Commissioner, depending on the circumstance.

- If the Commissioner approved the initial contract Waiver, any increase in project costs must be approved by the Commissioner via an additional Waiver request.
- If the initial contract did not require the Commissioner's Waiver approval, amendments of the initial small procurement contract of up to \$ 100,000 per occurrence may be made under Agency approval authority, as long as the aggregate of all increases, including the initial contract cost does not exceed \$ 200,000.

5.2 Waiver Request Approval Authorities

Alaska Marine Highway System Approval Authority

The review and approval of small procurement construction related Waiver requests generated by the Alaska Marine Highway (AMHS) falls under the approval authority of the Southeast Region Director.

Maintenance & Operations Approval Authority

The Maintenance and Operations (M & O) group approval authority falls under their respective regional Director.

Design & Engineering Services Approval Authority

The Chief Engineer, Statewide Design & Engineering Services signs as the approval authority on all small procurement construction related Waiver requests.

International Airports Approval Authority

The International Airport Director or designee has approval authority on all small procurement construction related Waiver requests.

Agencies receiving Construction Delegation Authority

The head of the Agency has approval authority for small procurement construction related Waivers up to the \$ 100,000 limit. When this responsibility is sub-delegated, a written notification of the delegation must be submitted to and approved by the CCO.

5.3 Considering State's Best Interest ¹

There is no single or comprehensive definition established by statute or code for the term "*in the State's best interest*." Nor is there a specific form that is filled out when making and requesting support of a "best interest" determination. Small procurement "*best interest*" determinations are required for:

¹ The terms "best interest," "best interest of the public," "best interest of the State", "best interest of the department," and "advantageous to the State" (or similar sentence structure) are considered synonymous. In 2 AAC 12.415, within the context of Single Source procurements, the definition given for "*in the state's best interest*" is: "*.....a determination that is reasonable under the circumstances and is neither arbitrary, capricious, or prompted by corruption.*"

- Public Interest Findings (DPDR 05.01.070).
- Single Source procurements.
- Design/Build (D/B) procurements.
- Contract dispute resolutions.
- Claims settlements.
- Contract terminations.
- Support of conduct that is a departure from a normal operating procedure.

Establishing "*Best Interest*"

The basis for a "*best interest*" recommendation must contain specific and significant evidence to support the finding. The written record must address (as applicable to the situation):

- 1) the applicable statutes, regulations, and policies on which the issues are based;
- 2) facts that are material to the determination;
- 3) how the recommendation can be found to be reasonable or practicable;²
- 4) the sound fiscal reason for the recommendation considered as a "*best interest*" factor);
- 5) whether an affirmative determination will avoid
- 6) the reasonable and foreseeable effects of the decision;
- 7) the duration of the determination effectiveness; and,
- 8) any other pertinent information upon which the determination can be made.

When a "*Best Interest*" Recommendation Cannot Be Used

The application of "*best interest*" with the intent to circumvent statute, code, policy, procedure, or ethical conduct is obviously inappropriate and could be unlawful.

Can a Determination of "*Best Interest*" be Delegated?

In certain circumstances, "*best interest*" determinations may be delegated - check with your Director.

² "Reasonable and Adequate Procedures" - Means procedures that ensure fairness to potential Offerors and competition commensurate with the circumstances of the procurement, considering price, mission requirements, and available competition; "reasonable and adequate procedures" includes contacting only one potential Offeror in appropriate circumstances.

"Practicable" - What may reasonably be accomplished or applied.

When in doubt, send the "*best interest*" recommendation to the DOT&PF Commissioner, via the Chief Contracts Officer, for Headquarters review/approval.

False Statements Made In Determinations

The official making the "*best interest*" determination must independently examine the material facts of the procurement and independently determine whether the procurement is eligible for the procurement method requested (AS 36.30.300 - .315).

5.4 The Public Interest Finding

A Public Interest Finding (PIF) is the typical document and permanent record used to satisfy a "*State's best interest*" or "*findings-of-fact*" requirement (see DPDR 10.02.013). There is no standard form for requesting a PIF determination. (a fiscal consideration may not always be

If a Waiver is required and it addresses the PIF, there is no reason to issue a separate PIF. injustice to a person,

All Public Interest Finding requests must be routed through the Agency Procurement Officer who signs the "Approval Recommended" portion of the PIF.

For DOT&PF projects and purchases, the DOT&PF Chief Contracts Officer, makes the final determination on public interest, based on the submittal of a complete analysis of the facts.

With the Delegated Operating Agencies that receive DOT&PF Construction Delegation of Authority, the final signature approval rests with the Agencies Purchasing Officer.

5.5 Emergency Procurement

Procurements may be made under emergency conditions only when one of the following conditions applies:

- There exists a threat to public health, welfare, or safety.
- A procurement through competitive means is impracticable or contrary to the public interest.
- There is the immediate need to protect public or private property.

Emergency Procurement Procedures

When action is required within 72 hours:

The Agency official or Procurement Officer must make a written determination of emergency, stating the factual basis for the finding. Upon completion of the emergency procurement, the written determination must be promptly forwarded to the CCO (2 AAC 12.460).

When action is not required within 72 hours:

Using Form 25D-026, provide a written determination of emergency stating the factual basis for the finding, and submit it to the CCO for review and approval by the DOT&PF Commissioner in accordance with the procedures listed in DPDR 10.01.040.

5.6 Single Source Procurement

A Single Source Procurement is the restriction of the purchase of supplies, services, or professional services to one potential vendor or contractor because no other source is suitable or acceptable to meet the need (AS 36.30.300, 2 AAC 12.410).

The head of the Procurement Agency, or the applicable Director is the approval authority on small procurement construction related Single Source Waivers. Single Source Procurements may be made only when:

- It is not practicable to award a contract by competitive sealed bidding, competitive sealed proposals, or limited competition; and
- Award of the contract is in the "State's best interest".

The Waiver Request for Alternate Procurement, Form 25D-026, Single Source, must cite the specific and significant interests that justify not using a competitive method (For information on "Considering State's Best Interest," see Chapter 7, Section 7.5 of this Manual and DPDR 10.023.013).

The written justification for the Waiver for a Single Source procurement must include evidence consisting of material facts sufficient for independent examination and verification, and must be structured substantially as follows:

- *"It is not practicable to award a contract by a competitive process because"*
(Cite the specific reasons why a competitive process is not practicable);
- *"Awarding a contract as a Single Source is in the State's best interest because"*
(Cite specific, significant interests that justify not using a competitive process);
- *"Per AS 36.30.300 and 2 AAC 12.410, we are requesting a Single Source determination to establish the aforesaid contract."*
- *"The contract will expire on (date)."*

The procurement official negotiates with the Single Source supplier on price, delivery, and terms, to the extent practicable. A copy of the finalized Waiver is to be sent to the CCO.

5.7 Limited Competition Procurement

A Limited Competition Procurement is a procurement restricted to two or more potential contractors or when competitive sealed proposal processes are impractical or contrary to the public interest (see DPDR 10.01.040).

The head of the Procurement Agency, or the applicable Director is the approval authority on small procurement construction related Limited Competition procurements.

The Waiver Request for Alternate Procurement, Form 25D-026, Limited Competition, must include findings of fact that support the determination per AS 36.30.305 and 2 AAC 12.430. A copy of the finalized Waiver is to be sent to the CCO.

5.8 Multi - Year (Term) Procurement

The small procurement method may be used for multi-year (Term) contracts, if the aggregate dollar amount for all years of the projected term does not exceed the \$100,000 small procurement limit. A Term procurement contract fulfills present and future needs by furnishing stated quantities of

supplies or services continuously for a set term, at specified prices. At the end of the first year, the Procurement Agency may, if funds are unavailable, cancel the remaining contract years. However, if the contract is cancelled prior to full extension, the contractor may be entitled to compensation for authorized costs.

5.9 Brand Name Materials

A Brand Name material requirement does not require a Waiver approval. Though the article may appear to be from a single source (i.e. only one manufacturer makes the product), its purchase and placement is not a Single Source procurement. This is because a number of competitors can compete for the contract - the Agency is not limiting the award to a single contractor, it merely requires the bidders to factor into their bids the only brand of material acceptable for a particular application.

A Brand Name contract requirement does require the DOT&PF Chief Contracts Officer's approval via submittal of the Public Interest Finding (PIF).

5.10 Purchasing Construction Related Supplies and Materials

When considering the purchase of materials for a construction project, in advance or independent of it, follow 2 AAC 12.760 - the procurement Agency must make a written determination of "States best interest" prior to such a purchase. The determination may cite economic, scheduling, practicality or other related factors as the basis. With such purchases they must be:

- (a) incorporated into a specific construction project and not simply used as inventory.
- (b) physically attached to the facility, either structurally, mechanically, or electrically (i.e., a portable dishwasher that is simply plugged into an outlet and attached to a hose bib is not acceptable, nor is an area rug or modular furniture. But a "built-in" dish washer, wall-to-wall carpeting, and "dismountable" full height partitions are.)
- (c) in compliance with Davis-Bacon wage provisions when installation services are included. Services are subject to Davis-Bacon when the combined value of the goods and services exceeds \$ 2,000.

If the materials are proprietary, or only one vendor can provide them, an approved Waiver Request for Alternate Procurement Methods - Single Source, is required (See Chapter 5 and DPDR 10.01.040).

Construction related materials or supplies that are not project specific must be solicited by the DOA solicitation procedures.

5.11 "As-Needed" (indefinite-quantity) and the "Requirements" Procurement

Many so-called "as - needed" contracts are in actuality a "requirements" contracts - a confusing issue of language that can complicate your procurement. Recognize that in the purchasing field, the contract phrase "as - needed" is recognized as being synonymous with "indefinite-quantities."

Small procurement statutes and regulations apply to "as-needed" and "requirements" procurements if the dollar amount for each contract year does not exceed the \$100,000 small procurement limit. These two types of contracts may also be set up as Term procurements.

The "As - Needed" (indefinite-quantities) Procurement

An "indefinite-quantities" procurement provides that the Contractor furnishes an indefinite amount of specific supplies or services within a fixed time, with deliveries made after an order by the Procurement Agency. In most instances, a required minimum must be ordered. There is no obligation to place orders above the stated minimum.

Under the "indefinite-quantities" procurement, the Procurement Agency is not liable for costs if the Contractor is idled by lack of an order.

The use of a limited form of the "indefinite-quantities" agreement, where the Procurement Agency is not to be held to the implied obligation to secure minimums, is permissible. Such procurements are typically used when the Agency wants the freedom to do some of the work with its own personnel.

It is imperative that under such procurements, the Agency ensure that its' intent is clearly communicated in the solicitation and in the resulting contract documents.

"Requirements" Procurement

The "requirements" procurement allows the use of services or the acquisition of goods in quantities as may be needed.

The "requirements" solicitation usually includes a realistic estimate of the total quantity anticipated. However, this estimate is not to be construed as a representation that the estimated quantity will be required or ordered, or that the conditions affecting the requirements will be stable or normal.

When the Contractor promises to furnish services or supplies under a "requirements" procurement, the contract is enforceable because it contains the essential elements of mutuality, i.e., one party has agreed to furnish, and the other party agrees to accept and pay for the quantity needed.

Without restrictive language to the contrary, the Agency must order all of its identified needs from the Contractor during the term of the contract. If the needs stated at the time the contract is executed persist, the Agency cannot augment its own forces and do the work without liability. To use Agency forces to do work promised under a "requirements" contract is a breach.

When extending the term of an "indefinite-quantities" or "requirements" contract, a new contract along with a new Notice of Award / Notice to Proceed, Form SPC-003, or similar form, is required.

Because design is an integral part of the work, these procurements are solicited as professional service agreements.

See DPDR 10.02.021, Requesting Design/Build Procurement Approval, for process information

When providing information in support of a "design-build" procurement, always give a projection of the cost and of the time savings to be realized.

5.12 "Design - Build" Procurement

A "design-build" procurement is one in which the resulting design and construction of a project is assigned to a single contractor who develops and implements the project design and performs the construction of the work based on end result parameters and design criteria provided by the Procurement Agency.

SMALL PROCUREMENT MANUAL for CONSTRUCTION PROJECTS

CHAPTER 6: RECORDS KEEPING

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6.2	Required Small Procurement Records	6.1

6. RECORDS KEEPING

6.1 General Information

It is imperative to keep appropriate file records on all construction related small procurements. Generally, the documents that are important to keep on file include:

- (a) agenda for the pre-construction meeting;
- (b) delegation memos;
- (c) memos of approval or denial;
- (d) change documents;
- (e) inspections;
- (f) project "close-out" reports; and
- (g) warranty related correspondence.

Emergency Procurements, regardless of cost, must be reported annually (by Oct. 31 of each year) by submission of a Procurement Report to the DOT&PF Chief Contracts Officer.

6.2 Required Small Procurement Records

All small procurement "*records that facilitate auditing*" must be placed in the construction project files (see AS 36.30.500 through 540, 2 AAC 12, and DPDR's 10.01.011 and 10.01.040).

The file record must include:

- a list of the contractors from whom quotes were solicited;
- the Procurement Agency's project cost estimate;
- the quotes received;
- any notable exceptions; and
- the Project Manager's recommendation regarding award, including approval or disapproval of the Procurement Agency.

Alternate Procurement Records

A record of all Alternate Procurements must also be maintained in the Procurement Agency's procurement file. These record are typically:

- the written determination approving the procurement;
- copies of all purchasing documents and quotations or informal proposals received; and
- a completed Procurement Report (Part 6 of the DOT&PF Waiver Request for Alternate Procurement Methods, Form 25D-026).

The Waiver Request, Part 6 reporting is made to the DOT&PF Chief Contracts Officer and must occur within five days after completion of the procurement.

All Single Source, Limited Competition and

SMALL PROCUREMENT MANUAL for CONSTRUCTION PROJECTS

CHAPTER 7: MISCELLANEOUS TOPICS

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7.2	Federal Recognition of Alaska's Small Procurement Code	7.1
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7.5	An Expiring Contract	7.1
7.6	Investigating Suspected Procurement Code Violations	7.2

7. MISCELLANEOUS TOPICS

7.1 Professional Services Agreements

Use the Professional Services Agreement (PSA) Manual for guidance in preparing PSA solicitations and contracts. The PSA Manual is available on the DOT&PF Procurement web page or can be obtained by calling the Central Region PSA Coordinator.

7.2 Federal Recognition of Alaska's Small Procurement Code

When any federal funding is involved, procurement solicitations are not restricted to beginning with those firms that just have offices in Alaska. Potential Offerors outside the State may be contacted at the same time as contact is made with Alaskan providers.

Federal Highway Administration (FHWA)

The FHWA recognizes and approves of the State's small procurement procedures and dollar limits. Most FHWA federally funded projects are under the Federal-aid Project Oversight Responsibility Agreement and do not require prior approval from that agency.

Federal Aviation Administration (FAA)

The FAA has not classified the DOT&PF as "Self Certified" and does not currently recognize the State's small procurement regulations as controlling.

Frequently refer to the FAA applicable Code of Federal Regulations (CFRs) and agency bulletins and circulars for the FAA's current position.

7.3 Disadvantaged Business Enterprise (DBE)

The DOT&PF promotes opportunities for socially and economically disadvantaged individuals to participate on federally funded highway and aviation projects through the Disadvantaged Business Enterprise Program (DBE).

The DOT&PF Civil Rights Office (CRO) ensures statewide compliance with the Department's federal non-discrimination and affirmative action obligations as a condition of continued federal funding for highway and airport construction.

The CRO has considered and determined that construction related projects of less than \$ 100,000 are free of DBE project goals.

The DBE Civil Rights Office can be contacted at 269-0851, or toll free 1-800-770-6236.

7.4 Art in Public Places

Though AS 35.27.020(d) states that a building or facility with an estimated construction cost of less than \$250,000 is exempt from the "Art in Public Places" requirement, AS 44.27.060(b) requires that;

-
- (b) The commissioner of a department responsible for the design and construction of a building or facility shall deposit into the art in public places fund one percent of the construction cost of a building or facility if the building or facility is exempt from the requirements of AS 35.27 and the exemption is because
- (1) the estimated construction cost of the building or facility is less than \$250,000; or
 - (2) the building or facility is not designed for substantial public use.

See DPDR 05.02.010, "Procurement of Artwork for Public Buildings and Facilities".

7.5 An Expiring Contract

All contracts, regardless of the amount, must be renewed or extended PRIOR TO THEIR EXPIRATION DATE. If the contract has expired, it cannot be renewed or extended (even if renewal options were available) unless, dependent on the circumstances, a Waiver Request for Alternate Procurement Methods, Single Source, Form 25D-026 is approved.

A retroactive change order to extend or renew an expired contract is prohibited.

7.6 Investigating Suspected Procurement Code Violations

It is the policy of the DOT&PF to investigate and report all suspected contract or procurement violations that occur within the Department and by those Agencies with a construction delegation of authority.

DPDR 10.02.023, "Investigating Suspected Procurement Code Infractions," establishes procedures for the investigation and reporting of a suspected contract or procurement violation. If the procurement authority falls under the Department of Administration (DOA), the procedures in the State Administrative Manual (Section 81.300 – 81.350) apply.

When a procurement or contract violation is suspected, the DOT&PF Chief Contracts Officer, must be immediately notified. The person who discovers a possible contract or procurement violation, regardless of their employment position, contacts the DOT&PF Chief Contracts Officer who determines the next procedural step.

Violations of procurement statutes, regulations, or the State Administrative Manual may be cause for revocation of purchasing authority, disciplinary action up to and including dismissal, and/or prosecution under AS 36.30.315.

Note: Use Procurement Agency Letterhead

Date: **January 28, 2002**

Re: **DOT&PF Office Space Remodel
Project No. ABC-123**

Transmittal Letter for: Contract
and Award Documentation

**South East Alaska Remodelers, Inc.
1000 North Third Avenue
Juneau, Alaska 99801**

Gentlemen:

We acknowledge receipt of your quote for the referenced **office space remodel** Project and have determined that you are the lowest responsive and responsible bidder. Enclosed is the contract form for the basic bid [and alternate(s) **one and two**] in the amount of \$ **86,800.00**. Following your acknowledgment, at the bottom of this form, and return of this original document the Award process will be complete.

You shall then be authorized to proceed immediately. All requirements of this contract shall be completed by **May 1, 1997**.

Contract administration of this project shall be overseen by **Mr. Jonathan Brown, Project Manager**. **Mr. Brown's** office is located at **6860 Glacier Highway, Juneau Alaska**. He can be contacted by telephone at **789-5555** [or by fax at **789-4444**.]

****** Note: Contractor notification of the preconstruction conference information may be provided as a separate letter. ******

[At _____ PM on _____, 200_, a preconstruction conference at _____. Attendance of a company representative and any anticipated subcontractors is required. If this time or location is unsuitable to you, then alternative arrangements need to be made with Procurement Officer Name]

All contacts regarding the operation of the Project, including administrative and technical matters, should be directed to the Project Manager or his designee.

Sincerely,

Procurement Officer

Attachments:

Contract Award Documents
[Preconstruction Meeting Agenda]

CC. Project Manager
Dept. Of Labor, Wage and Hour Division
[Other appropriate Procurement Agency personnel]

**AGENDA COVERING THE
PRECONSTRUCTION MEETING
FOR PROJECT NUMBER ABC-987 (Issued 1-28-02)**

Meeting Date and Time: **Friday, February 7, 1997 at 2:00 P.M.**

Meeting Location: **At the Project site,**

**Third Floor, DOT&PF Headquarters Building,
3132 Channel Drive, Juneau, Alaska**

Attendance is required of: Procurement Officer, **not required**

Project Manager, **Mr. Jonathan G. Brown**

Designer of Record, **not applicable**

Contractor's Representative, **Mr. William Green**

All anticipated subcontractors

Building Code Officials, **not required**

[Local Jurisdictions-provide listing]

[State Jurisdictions-provide listing]

[Federal Jurisdictions-provide listing]

Others as listed, **none**

SUBJECT AREAS TO BE DISCUSSED:

Item A- Intent of Contract Documents

Item B- Procurement Officer's (CO) authority

Item C- CO's redesignated authority [--not applicable]

Item D- Shop drawing review

Item E- Product substitution

Item F- Subcontractor Approval

Item G- Scheduling: [progress schedule] [submittal schedule] [inspection schedule]

Item H- Contract changes

Item I- Inspections and permit requirements/procedures

Item J- Alaska Products Preference Program [--not applicable]

Item K- Record documents and Project closeout

Item L- Contractor Payments

Item M- Certified Payroll

Item N- Equipment and material storage

Item O- Unique site conditions: [use of premises] [utilities] [security]

Item P- Warranties

Item Q- Other topics as appropriate

Documents to be provided at the meeting:

By the Procurement Agency:

administrative forms

[Letter of CO's redesignated authority] [none] []

By the Contractor:

progress schedule

[subcontractor listing] [shop drawings] [product "cuts"] [none] []

Use Procurement Agency Letterhead

Date: **February 3, 2002**

Re: **Office Space Renovation
Project No. ABC-987**

Notification of: Redelegated
Procurement Officer's Authority

**South East Alaska Remodelers, Inc.
1000 North Third Avenue
Juneau, Alaska 99801**

Mr. William Green:

Per item 1 of the *General Conditions for the Construction Contract*, I am further delegating my Procurement Officer administrative duties as follows:

Mr. Jonathan G. Brown is to act as Project Manager. His Procurement Officer authority includes; communications focal point, [contract clarification and/or interpretation,] [Approval of materials, shop drawings and subcontractors], [review [and Approval] of contract change documents], [review [and Approval] of Contractor payments], [] and inspection/Approval of Work.

*** *Note: Procurement Agency should carefully consider the extent (ie. levels) to which C.O. authority is further delegated. Avoid delegating authority to non-qualified personnel.* ***

[**Ms. Betty Sue White** is to act as Project inspector. **Ms. White's** Procurement Officer authority includes; inspection of Work [and]].

All remaining authority defined by the Contract Documents shall continue to be under the direct control of the Procurement Officer. This further delegation is effective immediately and shall remain in force throughout the Project life, except as may be further modified in writing.

Sincerely,

Harold J. Smith, Procurement Officer

CC. **Mr. Jonathan Brown** Project Manager
[**Ms. Betty Sue White**, Project Inspector]
[Other appropriate Procurement Agency personnel]

Use Procurement Agency Letterhead

Date: **February 13, 2002**

Re: **Office Space Renovation**
Project No. ABC-987

Approval/Denial of:
Subcontractors [and/or] Suppliers

South East Alaska Remodelers, Inc.
1000 North Third Avenue
Juneau, Alaska 99801

Mr. William Green:

Per item 4 of the *General Conditions for the Construction Contract*, I am issuing the following decision respective to your request for Approval of subcontractors [and/or] Suppliers:

The following submittals have been Approved. It remains the Contractor's responsibility to ensure that all Work is accomplished in strict compliance with the Contract Documents.

APPROVED: **** *The Procurement Agency would list those submittals which are in full compliance with the Contract* ****

***** *Occasionally the Procurement Agency will encounter submittals which cannot be Approved due to non-compliance with contract requirements or insufficient subcontractor information on which to base a decision. These submittals are to be rejected.* *****

The following submittals cannot be Approved. Approval is denied for reasons of non-compliance with contract requirements or insufficient subcontractor submittal on which to base a decision. It remains the Contractor's responsibility to ensure that each subcontractor is Approved prior to commencing any Work on this Project. Revised subcontractor submittals are required.

[NON-COMPLYING SUBMITTALS:] **** *The Procurement Agency would list those submittals which are in non-compliance with the conditions of the Contract* ****

[INSUFFICIENT SUBMITTALS:] ***** *The Procurement Agency would list each submittal which lacks sufficient "backup", and specify what additional information is required.* *****

Sincerely,

Jonathan Brown, Project Manager

Attachments: Annotated Submittals

CC. **Mr. Harold J. Smith**, Procurement Officer
[**Ms. Betty Sue White**, Project Inspector]
[Other appropriate Procurement Agency personnel]

Subcontractors/Suppliers

Use Procurement Agency Letterhead

Date: **February 13, 2002**

Re: **Office Space Renovation**
Project No. ABC-987

Approval/Denial of:
Shop Drawings [and/or] Materials

South East Alaska Remodelers, Inc.
1000 North Third Avenue
Juneau, Alaska 99801

Mr. William Green:

Per Form SPC - 003, item 1 of the *General Conditions*, I am issuing the following decision respective to your request for Approval of Shop Drawings [and/or] Materials:

The following submittals have been Approved, or conditionally Approved (see specific comments on individual submittal sheets). The submittals have been reviewed for compliance with contract specifications only. It remains the Contractor's responsibility to verify all field conditions, including dimensions, prior to commencing with the Work.

APPROVED: *** The Procurement Agency would list those submittals which are in full compliance. ***

CONDITIONALLY APPROVED: *** The Procurement Agency would list those submittals "Approved with conditions". ***

*** Occasionally the Procurement Agency will encounter submittals which cannot be Approved due to non-compliance with contract requirements or insufficient information on which to base a decision. ***

The following submittals cannot be Approved. Approval is denied for reasons of non-compliance with contract requirements or insufficient information on which to base a decision. It remains the Contractor's responsibility to ensure that each submittal is Approved prior to commencing that item of Work. Revised submittals are required.

[NON-COMPLYING SUBMITTALS:]

****** Procurement Agency would list those submittals which are in non-compliance. ******

[INSUFFICIENT SUBMITTALS:]

****** Procurement Agency would list each submittal which lacks sufficient "backup". ******

Sincerely,

Jonathan Brown, Project Manager

Attachments: Annotated Submittals

CC. **Mr. Harold J. Smith**, Procurement Officer
[**Ms. Betty Sue White**, Project Inspector]
[Other appropriate Procurement Agency personnel]

Shop Drawings/Materials

Use Procurement Agency Letterhead

Date: **February 21, 2002**

Re: **Office Space Renovation**
Project No. ABC-987

Approval/Denial of:
Substitute Products [and/or] Methods

South East Alaska Remodelers, Inc.
1000 North Third Avenue
Juneau, Alaska 99801

Mr. William Green:

Per item 1 of the *General Conditions for the Construction Contract*, I am issuing the following decision respective to your request for Approval of substitute products [and/or] methods:

The following submittals have been Approved, or conditionally Approved (see specific comments on individual submittal sheets). The submittals have been reviewed for compliance with contract specifications only. It remains the Contractor's responsibility to verify all field conditions, including dimensions, prior to commencing with the Work.

APPROVED: *** Contracting Agency would list those submittals which are in full compliance. ***

CONDITIONALLY APPROVED: *** Contracting Agency would list those submittals "Approved with conditions". ***

******Occasionally the Contracting Agency will encounter submittals which cannot be Approved due to non-compliance with contract requirements or insufficient information on which to base a decision. These submittals are to be rejected. ******

The following submittals cannot be Approved. Approval is denied for reasons of non-compliance with contract requirements or insufficient information on which to base a decision. It remains the Contractor's responsibility to ensure that each submittal is Approved prior to commencing that item of Work [Revised submittals are required].

[NON-COMPLYING SUBMITTALS:] **** Contracting Agency would list those submittals which are in non-compliance with the Contract conditions****

[INSUFFICIENT SUBMITTALS:] ****** Contracting Agency would list each submittal which lacks sufficient "backup", and specify what additional information is required. ******

Sincerely,

Jonathan Brown, Project Manager

Attachments: Annotated Submittals
CC. **Mr. Harold J. Smith**, Contracting Officer
[**Ms. Betty Sue White**, Project Inspector]
[Other appropriate Contracting Agency personnel]

Products/Methods

Use Procurement Agency Letterhead

Date: **February 28, 2002**

Re: **Office Space Renovation**
Project No. ABC-987

Approval/Denial of:
Contractor's Pay Request

South East Alaska Remodelers, Inc.
1000 North Third Avenue
Juneau, Alaska 99801

Mr. William Green:

Per item 1 of the *General Conditions for the Construction Contract*, I am rendering the following decision respective to your request for Approval of [Partial] [Final] Payment:

APPROVED: Your request for payment in the amount of **\$ 9,865.00** has been reviewed. All Work covered by this billing is found to be in substantial compliance. Approval is hereby issued and payment shall be forthcoming.

****** On occasion the Procurement Agency will encounter a pay request which cannot be Approved due to non-compliance with contract requirements or a discrepancy in the amount of "acceptable" Work actually completed. Notify the Contractor in writing as to why the request cannot be paid, Copy and return the original billing to the Contractor. ******

[NON-COMPLYING SUBMITTALS: Your request for payment in the amount of **\$ 9,865.00** has been reviewed. Work is not in substantial compliance with the following contract requirements. Approval and payment cannot be made.

***** The Procurement Agency would list those items of Work that are not in compliance. *****

Resubmit your request for payment when the above deficiencies are corrected.

PAY REQUEST DISCREPANCY: Your request for payment in the amount of **\$ 9,865.00** has been reviewed. The Procurement Officer has determined that Work has not been completed to the extent that you note and, based upon the Procurement Agency's observations, an Approved payment in the revised amount of **\$ 8,500.00** will be made.

Sincerely,

Jonathan Brown, Project Manager

[Attachments: Annotated Submittals]

CC. **Mr. Harold J. Smith**, Procurement Officer
[**Ms. Betty Sue White**, Project Inspector]
[Other appropriate Procurement Agency personnel]

***** Use Procurement Agency Letterhead *****

Date: July 11, 2002

RE: DOT&PF Office Space Remodel
Project No. ABC-987

Notice of: Required Warranty Work

*South East Alaska Remodelers, Inc.
1000 North Third Avenue
Juneau, Alaska 99801*

Gentlemen:

Item #10 of the General Conditions for the Construction Contract for the following project:

DOT&PF Office Space Remodel, Project No. ABC-987

requires the Contractor to remedy all defects in “materials or workmanship . . . for a period of one year from the date of final payment.” By issuance of this notice we are requesting the prompt repair of the following item(s):

Automatic door assist device on main door leading into the Commissioner’s Office area.

Please contact me at 789-5555 [or by fax at 789-4444] to establish the extent of repair work required and to schedule a suitable time to conduct the repairs.

Sincerely,

Johnathan G. Brown, Project Manager

CC: Harold J. Smith, Procurement Officer
[Other appropriate Procurement Agency personnel]

Required Warranty Work

***** Use Procurement Agency Letterhead*****

Date: July 28, 2002

RE: DOT&PF Office Space Remodel
Project No. ABC-987

Notice of: Required Warranty
Work – CURE LETTER

Certified Mail #333-11
South East Alaska Remodelers, Inc.
1000 North Third Avenue
Juneau, Alaska 99801

Gentlemen:

Item #10 of the General Conditions for the Construction Contract for the following project:

DOT&PF Office Space Remodel, Project No. ABC-987

requires the Contractor to remedy all defects in “materials or workmanship . . . for a period of one year from the date of final payment.” By issuance of this notice we are requesting the prompt repair of the following item(s):

Automatic door assist device on main door leading into the Commissioner’s Office area.

Previous requests for repairs to the above item(s) have not been adequately addressed. This “cure” letter is the agency’s final notice to your firm prior to pursuing an alternative course of action. [Please contact me at 789-5555 [or by fax at 789-4444] to establish the extent of repair work required and to schedule a suitable time to conduct the repairs.] OR [Commence immediately, and complete in a timely manner, the repairs as previously described.]

***** *Note: In the following paragraph the agency must establish a period of time in which the specified action must occur. This time must be reasonable taking into account weather, delivery of materials, availability of the Contractor and work forces, etc.* *****

Failure to comply with the above directions within 14 calendar days will result in the Agency making repairs on your behalf. Costs associated with these repairs (Agency expenses, as well as direct repair costs) will become the responsibility of your firm. Should you allow this to occur, and thereafter fail to reimburse all costs incurred by the Agency, your firm could be declared a non-responsible bidder on future bids and therefore ineligible for award under Alaska Statutes, A.S. 36.30.360, and regulations, 2 AAC 12.500.

Sincerely,

Johnathan G. Brown, Project Manager

[Prior notice given [orally] on July 2, 2002, and in writing on July 11, 2002]

CC: *Harold J. Smith*, Procurement Officer
[Other appropriate Procurement Agency personnel]
[Abc Bonding Services, Inc.]

Cure Letter

***** Use Procurement Agency Letterhead *****

Date: August 15, 2002

RE: DOT&PF Office Space Remodel
Project No. ABC-987

Notice of: Lack of Performance
and Assumption of Repair Work

Certified Mail #xxx-xx-xxxx

*South East Alaska Remodelers, Inc.
1000 North Third Avenue
Juneau, Alaska 99801*

Gentlemen:

Item #10 of the *General Conditions for the Construction Contract* for the following project:

DOT&PF Office Space Remodel, Project No. ABC-987

requires the Contractor to remedy all defects in “materials or workmanship . . . for a period of one year from the date of final payment.” By issuance of this notice we are informing you that the Procurement Agency will commence with the prompt repair of the following item(s) on your firm’s behalf:

Automatic door assist device on main door leading into the Commissioner’s Office area.

Our records indicate that our “cure letter” dated *July 28, 2002* was received by your firm on *July 31, 2002*. Your failure to proceed with the requested work, or to contact us as to why you cannot perform, within the time frame stipulated; now requires us to perform this work on your behalf. Your firm will be responsible for all costs (agency expenses, as well as, direct repair costs) associated with performing this work. Failure to reimburse all costs incurred by the agency, could result in your firm being declared a non-responsible bidder on future bids and ineligible for award under Alaska Statutes, A.S. 36.30.360, and regulations, 2 AAC 12.500.

Should you have any questions concerning this notice please contact me at 789-5555 [or by fax at 789-4444] immediately.

Sincerely,

Johnathan G. Brown, Project Manager

[Prior notice given [orally] on July 2, 2002, and in writing on July 11, 2002; cure letter July 28, 2002].

CC: *Harold J. Smith*, Procurement Officer
Director, Division of Statewide Design & Engineering Services
[Other appropriate Procurement Agency personnel]
[Abc Bonding Services, Inc.]

Lack of Performance

***** Use Procurement Agency Letterhead *****

Date: September 30, 2002

RE: DOT&PF Office Space Remodel
Project No. ABC-987

Transmittal Letter: Notice of
Final Completion

South East Alaska Remodelers, Inc.
1000 North Third Avenue
Juneau, Alaska 99801

Gentlemen:

As Procurement Officer, I acknowledge completion of all physical work associated with the following project.

Project Name: *DOT&PF Office Space Remodel*
Project No.: *ABC-987*

Specific contractual requirements dealing with clearances and releases remain prior to Project Acceptance. These documents will be transmitted to you shortly for completion. Should you have any questions concerning these documents please contact *Mr. Jonathan Brown, Project Manager*. *Mr. Brown's* office is located at *6860 Glacier Highway, Juneau Alaska*. He can be contacted by telephone at *789-5555* [or by fax at *789-4444*.]

Sincerely,

Harold J. Smith, Procurement Officer

CC: Jonathan G. Brown, Project Manager
[Other appropriate Procurement Agency personnel]

Final Completion

MEMORANDUM

State of Alaska

**Department of Transportation & Public Facilities
Statewide Design and Engineering Services Division
Design & Construction Standards Section**

TO: Mike Davis, Field Auditor
Tax Examiner
Compliance Unit
Dept. of Revenue (MS 0400)

DATE: September 30, 2002

FILE NO: CIP-ABC-987

TELEPHONE NO: 789-5555

FAX NUMBER: 789-4444

TEXT TELEPHONE: 465-3652

FROM: Jonathan G. Brown
Project Manager

SUBJECT: Request for Clearance of Taxes

Please advise whether or not clearance is granted for the below listed contractor.

**South East Alaska Remodelers, Inc.
1000 North Third Avenue
Juneau, Alaska 99801**

Project: DOT&PF Office Space Remodel, Number ABC-987
Time Worked: February 3, 2002 to May 1, 2002

AS 36.90.200 requires that the State now pay interest on contractor's final pay requests if payment is not made within 30 days.

If within 14 calendar days, we do not receive written notice from your office of an outstanding deficiency or failure to file reports, we will process this contractor's final pay estimate for payment.

- ☐ Clearance is granted for payment
☐ Clearance is not granted for payment.

Remarks:

Signature

Date

Title

***** *Use Procurement Agency Memo* *****

CC: Harold J. Smith, Contract Officer
[Other appropriate Procurement Agency personnel]

MEMORANDUM

State of Alaska

**Department of Transportation & Public Facilities
Statewide Design and Engineering Services Division
Design & Construction Standards Section**

TO: Susan K. Jones
Wage & Hour Technician
Dept. of Labor (MS 7400)

DATE: September 30, 2002

FILE NO: CIP-ABC-987

TELEPHONE NO: 789-5555

FAX NUMBER: 789-4444

TEXT TELEPHONE: 465-3652

FROM: Jonathan G. Brown
Project Manager

SUBJECT: Request for Clearance of Wages

Please advise whether or not clearance is granted for the below listed contractor.

**South East Alaska Remodelers, Inc.
1000 North Third Avenue
Juneau, Alaska 99801**

Project: DOT&PF Office Space Remodel, Number ABC-987

Time Worked: February 3, 2002 to May 1, 2002

AS 36.90.200 requires that the State pay interest on contractor's final pay requests if payment is not made within 30 days.

If within 14 calendar days, we do not receive written notice from your office of an outstanding deficiency or failure to file reports, we will process this contractor's final pay estimate for payment.

- ☐ Clearance is granted for payment
☐ Clearance is not granted for payment.

Remarks:

Signature

Date

Title

***** *Use Procurement Agency Memo* *****

CC: Harold J. Smith, Contract Officer
[Other appropriate Procurement Agency personnel]

***** Use Procurement Agency Letterhead *****

Date: October 15, 2002

RE: DOT&PF Office Space Remodel
Project No. ABC-987

Letter of Project Acceptance

*South East Alaska Remodelers, Inc.
1000 North Third Avenue
Juneau, Alaska 99801*

Gentlemen:

As Procurement Officer, I acknowledge completion of all work associated with the following project.

Project Name: *DOT&PF Office Space Remodel*
Project No.: *ABC-987*

You should receive a final contract payment in the next few days. Should you have any questions concerning your payment please contact *Mr. Jonathan Brown, Project Manager*. *Mr. Brown's* office is located at *6860 Glacier Highway, Juneau Alaska*. He can be contacted by telephone at 789-5555 [or by fax at 789-4444.]

Sincerely,

Harold J. Smith, Procurement Officer

CC: *Jonathan G. Brown*, Project Manager
[Other appropriate Procurement Agency personnel]

Letter of Project Acceptance

9. QUESTIONS AND ANSWERS

This chapter will be periodically updated.

- **When three contacts must be made in a solicitation, does that also mean that at least three quotes must be received?**

No. Once the necessary number of contacts has been made, the number of responses is not at issue. However, it is in the best interest of the Procurement Agency to receive multiple quotes as they provide a good basis for a determination on having accomplished receipt of the best responsive and responsible quote.

- **I have solicited for quotes and used media advertising. I received responses from three firms before the date to receive all quotes. Can I award early because I have received the minimum three quotes?**

No. If a media advertisement has been run, it has the potential of reaching parties unknown to the Procurement Agency. Unless an amendment is issued to foreshorten the date for response, with notification given in the same manner as the initial solicitation, the "date for receipt of quotes" cannot be changed because adequate numbers of quotes were early received. To change a date for receipt of quotes without proper notification would be unfair to potentially interested parties.

- **Though not required for quotes under \$ 100,000, I want to advertise for a small procurement using the Competitive Sealed Bid (or Competitive Sealed Proposal) procedure. Am I bound by the rules of advertisement for a CSB or CSP even though it is a small procurement?**

Yes. You can use the more formal advertising procedures as explained under AS 36. 30.110, 130, and 210. These procedures are different from solicitation requirements for small procurements. If the Competitive Sealed Bid or Competitive Sealed Proposal procurement method is used, you must abide by the conditions set forth in their applicable statute and code. Don't forget that 2 AAC 12.130, PUBLIC NOTICE, (this includes the requirement of posting notice "On-Line") and the Notice of Intent to Award (2 AAC 12.210 or 310) requirements are then in effect.

- **The work of the contract I want to advertise for is on a State owned building. Do I use the Small Procurement Manual for Construction Projects and its forms or is there another manual I should use?**

The Small Procurement Manual for Construction Projects also applies to building construction related procurements that are under \$100,000. However, the forms in the Manual may not meet requirements to manage all contracts, such as work on a building facility. There is another DOT&PF manual used internally that is titled the "DOT&PF Facilities Construction Manual," with forms applicable to building projects. This manual is an internal document that is maintained by and available from the DOT&PF Central Region Facilities Manager.

- **What is a "responsive and responsible" quote?**

RESPONSIVE OFFEROR - A Responsive Offeror is a firm or person who has submitted a quote that conforms in all material respects to the solicitation. The quote must directly answer all questions and provide all submittals as directed by the solicitation.

Alternate quotes are nonresponsive unless the solicitation states that such quotes may be accepted.

RESPONSIVE QUOTE - A Responsive Quote is one that materially conforms to the requirements of the solicitation.

A quote that is conditioned upon receiving award of both the particular contract being solicited and another Agency contract is nonresponsive unless conditioned quotes are specifically authorized in the invitation to quote.

RESPONSIBLE OFFEROR - One who is capable financially and who is competent to complete the job for which he/she is quoting. A Responsible Offeror is one who is not only financially responsible, but who is possessed of a judgment, skill, ability, capacity, and integrity requisite and necessary to perform a public contract according to its terms.

The unreasonable failure of an Offeror to promptly supply information to an inquiry with respect to responsibility is grounds for a determination of being nonresponsive.

2 AAC 12.500 provides helpful standards for assessing the responsibility of a prospective contractor.

- **We only request quotes from contractors that have proven themselves or come with high recommendations. Is this acceptable procurement procedure?**

Yes. Direct contact with known or reputable contractors is acceptable. However, if an interested party becomes aware of the solicitation and asks to participate, he/she cannot be prohibited from submitting a quote.

- **If a vendor appears on the Vocational Rehabilitation List, what does it mean to a small, construction related procurement? Does this preference apply to Requests for Quotes (RFQ's)? And, does it apply to Federally funded contracts?**

If the project is State funded, the disability preference applies (AS 36.30.170), regardless of the procurement method used.

The State cannot apply an employment program or disability preference to federal aid projects. See Chapter 2.

- **What is the "Little Miller Act" and how does it apply to construction related small procurements?**

The Federal statute known as the Miller Act (Miller Act Bonds, 40 U.S.C.A. Section 270a-e) requires that those who contract with the Federal Government furnish a Performance Bond in favor of the Federal Government and a Payment Bond in favor of laborers and materialmen.

The Little Miller Act, A.R.S. S 34-222 et seq., requires that those who contract with the State and any of its political subdivisions furnish a Performance Bond in favor of the government agency involved and a Payment Bond for the benefit of the laborers and materialmen.

Alaska's bonding requirements (AS 36.25.010, 2 AAC 12.810) for projects over \$ 100,000 meet the provisions of the Little Miller Act.

- **Is a Payment or Performance Bond required on small procurement construction contracts?**

Payment and Performance Bonds are required for all construction projects exceeding \$ 100,000. For all other contracts, bonds are at the discretion of the Procurement Officer. The operative statutes and regulations for bonds are AS 36.25.010, AS 36.30.040, AS 36.30.120, and 2 AAC 12.810.

- **Our small construction procurement solicitations and award process usually occur in less than ten (10) days. This makes it difficult to receive a protest prior to the deadline for the receipt of quotes if the Contractor is allowed ten (10) days to protest from the final date of the solicitation. Must we hold on making the award until the ten (10) period has passed after the deadline for receipt of quotes?**

Under 2 AAC 12.695(c), *"If protesting the award of a small procurement of no more than \$ 25,000, the protest shall be filed within 10 days from the date of the solicitation or award, whichever is later."*

and,

2 AAC 12.695(d) *"If protesting the award of a small procurement contract greater than \$ 25,000, a protest shall be filed within 10 days from the date that notice of award is made."*

The key word in the above is "or award." The award may proceed under the guidelines as set forth in AS 36.30.575.

- **Can a contract for janitorial services be solicited for under the Small Procurement Manual for Construction Projects?**

Yes, if the contract falls within the small procurement limit of \$ 100,000. The DOT&PF is delegated procurement authority for janitorial related projects for services within a State owned facility (If the building is leased, contact the DOA or the Lessor to ascertain authorities) that are directly related to:

cleaning;
sanitizing;
snow removal, or
day-to-day routine care of the facility.

The DOT&PF Maintenance & Operations section in each region administers DOT&PF janitorial contracts.

- **Is it a legal requirement that an employee be professionally licensed and registered as an Engineer in order to serve in responsible charge of a State funded building construction project, regardless of the project cost?**

See AS 08.48 - There must be a registered professional in responsible charge of certain construction projects, except where specific exemptions are granted. Buildings or structures whose primary use is public occupancy are not projects where exemption from the professional licensing requirements is made. A field representative need not be licensed as a professional in the respective discipline - this subordinate employee is specifically exempted from professional licensing requirements as long as he is reporting to a registered professional who is in responsible charge (articles (4) and (5) of AS 08.48.331).

A Sister Agency who has an unregistered person inspect or oversee building (and certainly, other types) construction must have an agreement with a qualified consultant, or the DOT&PF to provide a registered professional engineer who assumes overall project responsibility.

- **Davis- Bacon Wage Rate Requirements are often confusing. Please explain when they apply on small procurements?**

To say that every activity precedent to a public works construction project is subject to Davis-Bacon wages would be too broad. In general, all construction related small procurements in excess of \$ 2,000 (total of labor & materials), including projects that have been increased to over \$ 2,000 by change order, are subject to the wage rate determinations of the State of Alaska, Department of Labor and Workforce Development, Wage and Hour Division.

Activities precedent to the project should be reviewed for possible coverage under the act. As an example: An emergency spill response necessary to contain and control the situation does not apply to Davis-Bacon. However, the later remedial actions to repair, recover, or rehabilitate the affected area do require the payment of Davis-Bacon wages.

Procurement Agencies may request a waiver from certain wage requirements by contacting the Wage and Hour Division (See Chapters 1 & 2 of the Manual). If there is a question on Davis-Bacon applicability, contact the Dept. of Labor, Wage & Hour Division for guidance.

- **Is an "electronic signature" acceptable for a quote response?**

Yes. An "electronic signature" is not synonymous with a "Faxed signature." However, both are acceptable forms of signature submittal for a quote response.

- **May a Canadian entity quote on a State of Alaska construction related project, even when Federal funds are involved?**

Yes, as long as competitive solicitation procedures are followed. But, when a Canadian firm or government entity wants to quote on one of our solicitations, they must obtain a State of Alaska Business License (see Chapter 2, section 2.5 on business license requirements), and, if incorporated, they must register with the Division of Corporations. All standard insurance requirements would also apply.

Prices quoted must be in U.S. funds and include applicable federal duty, brokerage fees, packaging, and transportation cost to the FOB point so that upon transfer of title the commodity can be utilized without further cost. And, although exempt from most state and federal taxes, we are subject to the Canadian GST.

- **I want to erect a temporary trailer at a job site for our Project Manager. What procurement authority does this fall under?**

This procurement, though of a temporary facility, requires that construction related procurement procedures be followed if a foundation is installed. If it is a "roll-on, roll-off" temporary facility, DOA procurement guidelines apply.

Contact DOA or the DOT&PF contracts section if there is a question on facility type.

- **How does a potential contractor get on the State, or the DOT&PF's Offerors (Bidders) List?**

The DOT&PF does not have nor utilize a statewide list of potential Offerors for construction related projects as does the Department of Administration, Division of General Services for non-construction related solicitations. Rather, it is expected that potential Offerors will find the information they need on construction related commodities, services, and professional services contracts by looking:

1. on the State of Alaska On-Line Public Notice System at:
<http://notes.state.ak.us/pn/pubnotic.nsf>
2. on the DOT&PF Procurement page at:
<http://www.dot.state.ak.us/>

- **Are we to use petroleum price adjustments in our small construction related procurement contracts?**

The DOT&PF does not have a statewide policy on price petroleum adjustments on asphalt or other related products used in construction projects. However, the Procurement Agency may add such provisions in their contract Special Provisions, independent of the DOT&PF Commissioner's prior approval.

- **If a term (multi-year) contract is assigned to another entity by the "award" Contractor, must that term contract be readvertised after the completion of the contract year in which it was reassigned?**

No. If the contract was properly executed in its transference, the new Contractor accrues all rights and obligations of the previous Contractor to the contract.

- **Is there a specific form(s) to use to terminate a Contractor for non-performance on a contract?**

Contact your Agency's attorney prior to any termination action.

There is no specific form for terminating a contractor for poor or non-performance. However, there is example correspondence (see Chapter 8) that addresses such communications. Remember, the contractor must be afforded due process (i.e. the right to perform the work, rebut the allegations, the right to defense, etc.). Look to 2 AAC 12.620 for the form, notice, and time that must be given.

It is helpful to look to section 108-1.08 Default of Contract, of the Standard Specifications for Highway Construction for a good systematic process to follow.

- **What does it mean to "repudiate a contract"?**

You don't have to wait until someone fails to perform under a contract before acting. If you have reasonable ground for belief that a contractor will be unable to perform, you can demand adequate assurance of performance. The contractor's failure to respond to your request, or failure to provide a

reasonable response, can be considered a repudiation of the contract. The Agency may then terminate the contract and recover damages (AS 45.02.609).

- **In response to a solicitation, an Offeror extends a 10% discount if payment is made within 15 days. Can the discount be considered?**

It depends on the language of the solicitation. If there is no such qualifying language, the answer is no because there is no guarantee that payment will be made in time to get the discount. And, be careful - a response such as this might be considered a "conditioned quote" depending on the language used by the Offeror.

- **In awarding a contract to a firm outside Alaska who will perform services wholly outside the State, is the contractor required to have Alaska Workers' Compensation Insurance?**

Yes. Even if the firm does not intend to physically place an employee in Alaska to perform any part of the work, AS 23.30.045 requires that Alaska State Workers Compensation Insurance be provided by an insurance company authorized to transact the business of workers' compensation insurance in Alaska. Such proof of Alaska Workers Compensation Insurance is required before award of the contract.

- **Can the Workers' Compensation Insurance requirement be waived?**

Yes. In instances where the contractor is also the owner (i.e., no employees), he/she, as the principal, can sign a waiver as part of the contractual agreement removing the State of Alaska from any liability for waiving the insurance requirement. See AS 23.30.045 on Employer Liability for Compensation.

- **What procurement method is to be followed when purchasing construction related materials, such as crushed aggregate, that will be stockpiled for long term use?**

As long as the material is for a specific construction project(s), the \$100,000 small procurement limit process covered in this manual may be utilized. However, if the materials are to be used for routine maintenance, the DOA non-construction related procurement procedures must be used.

- **It is anticipated that because of the type of service being sought, there may not be an Alaska Offeror capable of quoting. Do I need prior approval above the Agency Procurement Officer to solicit quotes from out-of-state vendors?**

No. Prior approval to make contacts with out-of-state vendors or to invite out of state quotes is not required. Even if the anticipated amount of the contract is near the \$ 100,000 threshold, and the Procurement Agency seeks to use the Competitive Sealed Bid (AS 36.30.100 - 190) or Competitive Sealed Proposal (AS 36.30.200 - 270) route for advertising, approval to solicit outside Alaska is not required.

Even when a solicitation is made within just the State, if a prospective out-of-state Offeror asks for a quote package, he/she must be provided one and the quote submittal accepted when timely submitted.

- **Is it permissible to disclose information on vendors during the small procurement solicitation process?**

It is "best practice" to not divulge names of vendors contacted, whether it be for a small procurement solicitation, a competitive sealed bid, or a competitive sealed proposal. Vendor lists may be distributed upon request of an interested party, but a vendor list is different than a contact or recipient list. After the Notice of Intent to Award, recipient or contact lists may be divulged.

Look to DOA Procurement Information Message # 59 for additional guidance, as the DOT&PF has found this PIM particularly helpful for guidance on all categories of procurements.

10. DEFINITIONS

Words and phrases are construed according to the rules of grammar and their common and approved usage. However, often by legislative or legal intent, those 'thought to be' common terms and expressions can take on a certain meaning. Construction contract language is no exception. This document has been created to provide a commonly accepted definition of words and terms often used in construction contracts.

Notes

Account Code - That series of numbers, used in the Alaska State Accounting System (AKSAS), to identify the category of the construction expense.

Addenda (Addendum) - All clarifications, corrections, or changes issued graphically or in writing after the advertisement but prior to the opening of quotes.

Advertisement - The public announcement, as required by law, inviting responses for work to be performed or materials to be furnished.

Alaska Administrative Code (Regulations) - These 'codes' amplify or give direction to statutes [where more than one regulation applies, the more restrictive prevails].

Alaska Bidder - A person who:

- (1) holds a current Alaska business license;
- (2) submits a bid for goods, services, or construction under the name as appearing on the person's current Alaska business license;
- (3) has maintained a place of business within the state staffed by the bidder or an employee of the bidder for a period of six months immediately preceding the date of the bid;
- (4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, or is a partnership and all partners are residents of the state; and
- (5) if a joint venture, is composed entirely of ventures that qualify under (1) - (4) of this subsection.

Alaska Procurement Code - The Alaska Procurement Code, AS 36.30, was enacted in 1987 to provide a comprehensive statutory system for the regulation of the procurement of goods and services for the State of Alaska. It is based upon the premise that the procurement of goods and services should be through competitive bidding in order to promote competition and the best interests of the State.

In recognition that competitive bidding would not be either possible or desirable in all procurements, the code provides for exceptions to this general rule. Single Source procurement is one such exception.

Alaska Product - A product of which not less than 25 percent of the value, as determined in accordance with regulations adopted under AS 36.30.332(a), has been added by manufacturing or production in the State.

Notes

Alaska State Accounting System (AKSAS) - The grand repository of all project financial records (see also: account code; collocation code; ledger code; encumbrance).

Alternate Procurements - Procurements made by means other than Competitive Sealed Bid or Competitive Sealed Proposal, which includes procurements such as Single Source, Limited Competition, and Emergency.

Ambiguity - Generally recognized in contract law as being when more than one plausible explanation of a bidder's intent can be found.

Appeals Officer - The Commissioner of the Department or designee assigned to administratively adjudicate appeals that come before the Department.

Approved or Approval - Written approval by the Procurement Officer or authorized representative.

Arbitrary & Capricious - A decision or action that is willful and unreasonable without consideration or in disregard of facts or law or without determining principle.

As-needed Contract - The same as an 'indefinite-quantities' contract. "As-needed" contracts are often confused or misapplied with the "requirements contract." Many of the termed "as needed" contracts are found to actually be "requirements contracts."

Authorized - Authorized by a written delegation under 2 AAC 12.740 by the head of an agency that has a delegation of procurement authority based on a written determination of capability under AS 36.30.015.

Award - The acceptance of the successful bid by initiating the contract.

Best Interests of the State - See "In the State's Best Interest".

Bid Schedule - A written tabulation of the bids received in the order from lowest to highest, excluding bids that were non-responsive or non-responsible.

Bid Tabulation - The listing of all bids received on the project including the Engineer's cost estimate. It is released shortly after bid opening.

Bidder - Any individual, firm, corporation or any acceptable combination thereof, or joint venture submitting a bid (or quote) for the advertised work.

Bonding - Bonding is grouped into three basic classifications:

- A **Bid Bond** is the form of guarantee consisting of a bond, certified check or negotiable instrument that is submitted with the bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. The Department, in the contract, determines the amount of the bid bond for the contract. If a Bidder / Offeror is selected to receive the contract and fails to negotiate, or fails to deliver a fully executed contract after award / negotiation, the bid bond will usually be immediately forfeited to the State. Bids / offers submitted without a bid bond, when it is called for, must be rejected.

Notes

- A **Performance Bond** is a bond executed in connection with a contract to assure fulfillment of all the Contractor's obligations under the contract.
- A **Payment Bond** is a bond executed in connection with a contract to assure payment, as required by law, to all persons supplying labor and material in the execution of the work provided for in the contract.

Business License - A license required under the Alaska Business License Act (AS 43.70) by the division of occupational licensing and, for a person engaging in a business subject to licensing provisions of a regulatory nature, a license, certificate, permit, registration, or similar evidence of authority issued for an occupation by competent legal authority.

Calendar Day - Every day shown on the calendar, beginning and ending at midnight.

Certification - A process through which the Department determines that an individual meets the mandatory training, experience, and continuing education standards established for a particular discipline, position, etc.

Change Document - Any written document executed by the Procurement Agency that changes the contract terms.

Change Order - A written order signed by the procurement officer, directing the Contractor to make changes that the changes clause of the contract authorizes the procurement officer to order.

Chief Contracting Officer - The DOT&PF Commissioner's Office Chief of Contracting & Procurement.

Code of Federal Regulations (CFR) - When Federal funding is involved, this document prevails over State policies & procedures.

Collocation Code - That series of numbers within the Alaska State Accounting System (AKSAS) that identifies the project's financial account. It has eight digits that are used to identify the source of the project funds (see also, Ledger Code).

Competitive Sealed Bidding (CSB) - The procedure under AS 36.30.100 - 36.30.190.

Competitive Sealed Proposal (CSP) - See AS 36.30.200 and 2 AAC 12.260.

Computation of Time - Time is based on calendar days and is computed by excluding the first day and including the last. If the date due of a submittal falls on a weekend or holiday, the following business day applies.

Concurrent Review - A process of review of construction project records to assure that such records are in accordance with contract requirements and established procedures and are adequate to support payments to Contractors.

Conditioned Bid - A bid containing unauthorized alterations or additions to the bid documents.

Notes

Conditions of the Contract - Those portions of the Contract Documents that define the rights and responsibilities of the contracting parties and of others involved in the work. The Conditions of the Contract include General Conditions, Supplementary Conditions, and other conditions.

Conformed Contract - The bound contract documents containing the plans and specifications, the fully-executed contract, payment and performance bonds, EEO forms, and a completed bid schedule.

Construction - The process of building, altering, repairing, maintaining, improving, or demolishing a public highway, structure, building, or other public improvement of any kind to real property other than privately owned real property leased for the use of agencies; it includes services and professional services relating to planning and design required for the construction; it does not include the routine operation of a public improvement to real property nor does it include the construction of public housing. "**Construction**" or any derivation means construction, reconstruction, alteration, improvement or major repair.

Constructive Change Order - Any conduct by a Contracting Officer or other authorized official that is not a formal change order, but that has the effect of requiring a Contractor to perform work different from that prescribed by the original terms of the contract, constitutes a *constructive change order* - entitling the Contractor to relief under the changed conditions clause of the contract.

Such conduct may be in the form of an affirmative act, a failure to act (an "omission"), or what has been termed a "course of conduct." It may be in writing, or it may be oral. It may be casual or informal (i.e. words such as "order" or "direct" need not be used). In short, it may be anything that, in practical effect, constitutes a requirement by an authorized State official that the Contractor perform work not originally specified in the contract.

If a Contracting Officer directs a Contractor to perform work in accordance with an interpretation of the contract specifications that differs from the Contractor's interpretation, and the Contracting Officer's interpretation is erroneous, the Contracting Officer's action constitutes a constructive change order entitling the Contractor to appropriate relief.

A Contractor may not realize that a constructive change order has in effect been given until after work on it has progressed for a considerable time. However this is not fatal to the Contractor's claim, as the situation is one that has been created by the State and by the State's failure to advise the Contractor correctly regarding the nature of the action, and such delay in claiming does not preclude the Contractor from receiving just compensation.

Consultant - The person, firm, or corporation retained directly to prepare Contract Documents, perform construction administration services, or perform other Project related services.

Contract - All types of State agreements, regardless of what they may be called, for the procurement or disposal of supplies, equipment for the State fleet, services, professional services, or construction.

Notes

Contract Documents - The Contract form, Addenda, the bidding requirements and Contractor's bid (including all appropriate bid tender offers), the bonds, the Conditions of the Contract and all other Contract requirements, the Specifications, and the Drawings

furnished to the Contractor, together with all Change Orders and documents approved by the Contracting Officer, for inclusion, modifications and supplements issued on or after the effective date of the contract.

Contract Modification - A written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.

Contract Price - The total moneys payable by the Department to the Contractor under the terms of the Contract Documents.

Contract Time - The number of Calendar Days or the date specified in the construction Contract and authorized extensions that identify how much time the Contractor is allowed to achieve Final Completion.

Contracting Officer - The person authorized by the Commissioner, or designee, to enter into and administer the Contract on behalf of the Department. This entity has authority to make findings, determinations and decisions with respect to the Contract and, when necessary, to modify or terminate the Contract. The Contracting Officer is identified in the construction Contract.

Contractor - The Contractor, including subcontractors, performing work necessary to facilitate public construction.

Contracts Officer Bulletins (COB) - Bulletins issued by the DOT&PF Chief Contracts Officer that are intended to impart guidance or directives on certain construction contract matters. The bulletins are "interpretive" in nature and serve to inform and direct. They reflect the Department's policy on the issue being addressed. If a conflict between a bulletin and a statute or a formally adopted regulation is found to exist, the law/regulation takes precedence.

Controlling Item - Any feature of the work considered at the time by the Contracting officer as essential to the orderly completion of the work and which, if delayed, will delay the time of Final Completion of the Contract (such as an item of work on the critical path of a network schedule).

Cost Analysis - The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

Cost Data - Information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been actually incurred or that are expected to be incurred by the Contractor in performing the contract.

Cost Effective - The efficient use of labor, equipment, materials, and supplies to assure the lowest overall cost.

Notes

Cost of Construction - Includes, in addition to costs directly related to the project, the sum total of all costs of financing and carrying out the project. These include, but are not limited to, the costs of all necessary studies, surveys, plans and specifications, architectural, engineering or other special services, acquisition of real property, site preparation and

development, purchase, construction, reconstruction, and improvement of real property and the acquisition of machinery and equipment as may be necessary in connection with the project; an allocable portion of the administrative and operating expenses of the grantee; the cost of financing the project, including interest on bonds issued to finance the project; and the cost of other items, including any indemnity and surety bonds and premiums on insurance, legal fees, fees and expenses of trustees, depositories, financial advisors, and paying agents for the bonds issued as the issuer considers necessary.

Cost Plus Fixed Fee - Contractors are paid for all allowable costs plus a predetermined fixed fee. Such contracts have been found to be beneficial for research and development work.

Cost Plus Incentive Fee - A tentative fee based on estimated costs and an established target price. If actual costs fall below estimated costs, the Contractor and State share in the savings. The Contractor can lose all or part of the fee, but he/she must be paid for all costs.

Cost Plus Percentage of Cost - Under this type of contract, the Contractor receives payment for costs of performance plus a specified percentage of such actual costs as a fee. These contracts provide no incentive for efficient and economical Contractor performance and must not be used. These contracts are prohibited by statute.

Days - "Days" are calendar days unless otherwise specified.

Defective - An adjective that refers to work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or Approval referred to in the Contract Documents, or has been damaged prior to the Department's approval.

Department - In the context of this Manual, means the Alaska Department of Transportation and Public Facilities.

Departmental Policy - Policy of the Alaska Department of Transportation and Public Facilities.

Design-Build Construction Contract - A construction agreement where the design and construction of a project is assigned to a single Contractor who develops and implements the project design and performs the construction of the work based on end result parameters and design criteria provided by the Department of Transportation and Public Facilities.

Directives - Those written communications from the engineer to the Contractor concerning topics that are within the scope and language of the contract. Directives can be issued in the form of a letter to the Contractor and can be used to: clarify contract terms; suspend and resume work; document directions or instructions given to the Contractor; reject non-specification materials or work; and initiate work on contingent sum pay items.

Notes

Disability Preferences (AS 36.30.170) - The Division of Vocational Rehabilitation in the Department of Labor and Workforce Development keeps a list of qualified employment programs, a list of individuals who qualify as persons with a disability, and a list of persons who qualify as employers with 50 percent or more of their employees being persons with disabilities. A person must be on this list at the time the bid is opened in order to qualify for a preference.

Disaster - The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or man-made cause, including: (A) fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, or shortage of food, water, fuel, or clothing; (B) the release of oil or a hazardous substance, if the release requires prompt action to avert environmental danger or damage; and (C) equipment failure, if the failure is not a predictably frequent or recurring event or preventable by adequate equipment maintenance or operation.

Disaster Emergency - The condition declared by proclamation of the Governor or declared by the principal executive officer of a political subdivision to designate the imminence or occurrence of a disaster.

Drawings - The drawings show the character and scope of the work to be performed and are furnished by the Department or the Department's Consultant and are typically, by reference, made a part of the Contract Documents.

Effective Date of the Contract - The date on which the Contract is fully executed by both the Contractor and the Department.

Electronic Signature - An "Electronic Signature" is an encoded transmittal that ensures that electronic business can be transacted between certain parties that is binding. The "signature" code is established in a data base with the recipient in a way that prohibits unauthorized use. Due to the progressive evolution of electronic mail and the Internet, the electronic interchange of DOT bid advertisements, bid documents and bid proposals may soon become a reality.

The State of Alaska has recently adopted Senate Bill 0232B, *"An Act relating to electronic signatures, electronic records, requirements for records, and the reproduction of public records."* Under the auspices of the Lt. Governor's Office, Telecommunications Information Council, the State has formed the Electronic Signature Committee, a working group devoted to review the subject and make proposals for the development of regulations relating to electronic commerce.

Emergency Repairs - Those repairs, including necessary preliminary engineering (PE), construction engineering (CE), and temporary traffic operations, undertaken during or immediately after a natural disaster or catastrophic failure (1) to restore essential travel, (2) to protect remaining facilities, or (3) to minimize the extent of damage.

Employer Identification Number - The Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

Notes

Encumbrance - An amount of money set aside in the Alaska State Accounting System (AKSAS) to meet a financial obligation to a contractor, consultant, or equipment supplier.

Federal Funding Agreements - Every construction project that receives federal funds for a portion of the construction will include a federal funding agreement. The agreement outlines the cost accounting of the project that must be accomplished at the project level. There are two types of federal funding agreements: 1) the Project Agreement Estimate for Federal Highway Administration (FHWA) funded highway construction projects and 2) the

Grant Agreement for Federal Aviation Administration (FAA) funded aviation construction projects.

Final Acceptance - The Department's written acceptance of the work following Final Completion and the performance of all Contract requirements by the Contractor.

Final Completion - When the Project (or specified part thereof) has progressed to the point that all required work is complete as determined by the Contracting Officer.

Firm Fixed Price - The most common and easiest contract to administer. A fixed price contract is one that obligates the Contractor to performance at a specified price.

Force Account Construction - The direct performance of construction work by a State highway agency, a county, a railroad, or a public utility company by use of labor, equipment, materials, and supplies furnished by them and used under their direct control. See DPDR 10.02.012.

Good Faith - Good Faith is an intangible and abstract quality with no technical meaning or statutory definition - it encompasses an honest belief of the absence of malice and the absence of design to defraud or to seek unconscionable advantage.

Highway - Includes a highway, road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof and further includes a ferry system.

Impossibility to Perform - To be entitled to relief under the argument of "impossibility to perform," the Contractor must prove that the performance of the contract was, in fact, either actually or practically impossible to carry out.

ACTUAL IMPOSSIBILITY

Actual impossibility exists when the Contractor or any other producer cannot perform the contract according to its terms, either.

In other words, the impossibility must be objective (impossible to all) - rather than subjective (impossible only to the Contractor because of his own shortcomings, such as a lack of know-how). Actual impossibility exists when a contract's performance requirements cannot be met. It can also exist when the contract's specifications are erroneous.

PRACTICAL IMPOSSIBILITY

Practical impossibility is *"such commercial impracticability as to be the equivalent of legal impossibility."* Thus, even if it may be actually possible to meet specifications, the Contractor may receive relief if the contract requirements are impracticable *"because of extreme and unreasonable difficulty, expense, injury or loss involved"* in meeting them.

Notes

Generally, practical impossibility means, *"not possible within the basic objectives contemplated by the parties - as evidenced by the contract itself and the surrounding circumstances."*

Practical impossibility is difficult to prove. Even in cases where the Contractor, in order to properly perform, incurs costs far in excess of the contract price, mere hardship or excessive cost, or even exorbitant cost is not enough to prove impossibility.

Incentive/Disincentive for Early Completion - A contract provision that compensates the Contractor a certain amount of money for each day identified critical work is completed ahead of schedule and assesses a deduction for each day the Contractor overruns the incentive/disincentive time. Its use is primarily intended for those critical projects where traffic inconvenience and delays are to be held to a minimum. The amounts are based upon estimates of such items as traffic safety, traffic maintenance, and road user delay costs.

Indefinite-Quantities Contract - A contract that provides that the Contractor furnish an indefinite amount of specific supplies or services within a fixed time, with deliveries made after receipt of an order from or call by the State. In most instances there is a required, stated minimum that must be ordered. There is, however, no obligation to place any orders above the stated minimum. Under the "indefinite-quantities" contract, the State is not liable for costs of the Contractor if he/she is idled by lack of order. "Indefinite-quantities" contracts are often used when the desire for goods or services in a particular area exceeds the capacity of any one Contractor.

Independent Contractor - A Contractor employed to perform a task without being subject to control except as to the final results. An "independent contractor" generally:

- (1) has made a significant investment in the facilities used by him to perform services for another;
- (2) is in a position to realize profit or suffer a loss because of this service;
- (3) makes his services available to the general public; and
- (4) cannot end a contractual relationship without incurring liability nor be dismissed from the contract so long as the work performed is acceptable.

In most cases a "mom/pop" or "father/son" operation can only be considered an "independent contractor" when both members are joint owners of the firm.

Install - To build into the work, ready to be used in complete and operable condition and in compliance with the Contract Documents.

Interested Party - An actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract; whether an actual or prospective bidder or offeror has an economic interest depends on the circumstances (AS 36.30.699). Alaska's definition of "**interested party**" is similar to the federal definition.

Under 31 USC § 3551(2), *"interested party.....means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract."* Subcontractors are not interested parties within the meaning of 31 USC § 3551(2) and have no standing to protest or appeal procurement decisions.

Notes

In the State's Best Interest - The term "in the State's best interest" has come to mean certain things in particular circumstances. There is no single or comprehensive definition established by statute or code that fits every occasion, every time.

In 2 AAC 12.415, within the context of Single Source procurements, the definition given for "in the State's best interest" is: *".....a determination that is reasonable under the circumstances and is neither arbitrary, capricious, or prompted by corruption."*

The terms "best interest," "best interest of the public," "best interest of the State," "best interest of the Department," and "advantageous to the State" (or similar sentence structure) are considered to be synonymous terms.

Invitation for Quotes - Documents soliciting quotes for the work to be performed.

Latent Defect - An item of construction that was defective when installed but whose defective nature and the consequences of the defect do not become apparent until after the passage of time.

Ledger Code - That series of numbers within Alaska State Accounting System (AKSAS), the first six of which identify the project; the seventh digit identifies the project phase, and the eighth digit identifies the eligibility of the expense.

Liquidated Damages - The daily amount set forth in the contract to be deducted from the contract price to cover additional costs incurred by the State because of the Contractor's failure to complete the contract work within the number of calendar days or workdays specified. The term may also mean the total of all daily amounts deducted under the terms of a particular contract. The amount of actual damages is determined on a project by project basis. The amount is based on certain background information that is set out in the contract documents. If the Contractor fails to adequately perform in accordance with the contract agreement, the State will usually begin to collect liquidated damages on the date specified in the contract and will continue to collect them until some other determined time or action.

Maintenance - The preservation of each type of highway, roadside structure and facility as nearly as possible in its original condition as constructed, or as subsequently improved, and the operation of highway facilities and services to provide satisfactory and safe highways.

Material - A requirement in the specifications should be presumed to be material and good reasons must exist for finding that a deviation is not material. Matters that relate to cost are usually material. Because of the advantage accruing to the bidder who deviates from specifications and the obvious disadvantages accruing to the other bidders who submitted their bids based on specifications, one should be reluctant to waive provisions that deviate from specifications.

Materially Unbalanced Bid - A bid that generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost.

Mathematically Unbalanced Bid - A bid containing lump sum or unit bid items which do not reflect reasonable actual costs, plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

Notes

May - In some degree,; is likely to do something. Generally, "may" indicates that a choice or action is permissive but not mandatory. Indicates a judgement, usually dependent on interpretation of unique circumstances.

Memorandum of Agreement (MOA) - A project specific document that sets forth an agreement between the State and recognized governmental entity / Agency (usually a municipality) on how that construction project is to be passed to them and administered..

Memorandum of Understanding (MOU) - A general agreement document (usually with an established term) that sets forth conditions between the State and recognized governmental entity / Agency (usually a municipality) on how a program or general activities relating to delegated responsibilities will be handled.

Minor Informalities - Matters of form rather than substance that are evident from the bid document, or are insignificant matters that have a negligible effect on price, quantity, quality, delivery, or contractual conditions and that can be waived or corrected without prejudice to other bidders.

Misrepresentation - A false or misleading statement of material fact or conduct intended to deceive or mislead concerning material fact, whether it succeeds in deceiving or misleading.

Must - Commanded or required to do something; synonymous with "shall."

Non-responsive - A bid or proposal that does not conform in all material respects to the solicitation. A bid or proposal that is conditioned upon receiving award of both the contract being solicited and another State contract is nonresponsive unless conditioned bids are specifically authorized in the invitation to bid (2 AAC 12.840).

Bids are considered non-responsive and often rejected for:

- a. Failure to sign the bid.
- b. Failure to submit the bid at the place and time required in the solicitation.
- c. Failure to acknowledge amendments requiring signature.
- d. Failure to submit any required bid bond/security.
- e. Failure to provide product literature, brochures, or a letter of clarification when specifically required by the Invitation to Bid.
- f. Specifying a delivery time in excess of the delivery time required in the ITB (a conditioned bid).

Notice of Intent to Award - A Notice of Intent to Award does not constitute a formal award of a contract. After the completion of contract negotiations (as applicable to the bid type) the procurement officer usually issues a written Notice of Intent to Award (NIA) and sends copies to all offerors. The NIA sets out the names and addresses of all offerors and identifies the proposal selected for award. The scores and placement of other offerors is not a part of the NIA. The NIA must include: (1) a statement of the bidder's right under AS 36.30 to protest the award, including the time within which the protest must be received; and (2) the name of the successful bidder.

Notes

Notice to Proceed - A written notice to the Contractor to begin the work and establishing the date on which the contract time begins.

Person with a Disability - An individual;

(1) who has a severe physical or mental disability that seriously limits one or more functional capacities in terms of employability; in this paragraph, "functional capacities" means mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills;

- (2) whose physical or mental disability
- (A) results from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders, paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, or end stage renal disease; in this subparagraph, "neurological disorders" include stroke and epilepsy; or
 - (B) is a disability or combination of disabilities that are not identified in (A) of this paragraph and that are determined on the basis of an evaluation of rehabilitation potential to cause substantial functional limitation comparable to a disability identified in (A) of this paragraph; and
- (3) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.

Plans - All approved drawings in the contract that show the details of the project.

Practicable - What may reasonably be accomplished or applied.

Practical - Has the meaning given "practicable" in this document.

Preconstruction Conference - Held prior to the beginning of any construction project, this is a formal conference in which general items and items specifically related to the construction project are discussed by all interested parties.

Pre-qualification - *"an advance act or requirement that is used for determining a bidder's/offeree's eligibility or ineligibility to participate in the ITB/RFP process"*. In this context, neither statute nor code allows for an action of 'pre-qualification.'

The closest the procurement code comes to 'pre-qualifying' a bidder/offeree is by the two step bid/proposal process afforded under AS 36.30.190 and AS 36.30.265. These statutes allow the issuance of requests for unpriced technical offers, and then follow up with an ITB/RFP to those who are determined to have the technical merit and qualifications under the criteria set out in the first solicitation. Though this process may at first appear to be a 'pre-qualification' act, it differs in the significant aspect that it does not preclude the inherent right of the bidder/offeree to be preliminarily considered eligible to perform a function or service.

Price Analysis - The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, that may assist in arriving at prices to be paid and costs to be reimbursed.

Notes

Price Data - Factual information concerning offered or proposed selling prices, historical selling prices, and current selling prices, including profit, for supplies, services, or construction substantially similar to those being procured.

Prime Contractor - A person required to be registered under AS 08.18 who has a contract with the State or a political subdivision of the State to provide materials or services, other than as an employee, for a public construction or public works project.

Procurement - Buying, purchasing, renting, leasing, or otherwise acquiring supplies, equipment for the State fleet, services, or construction; it also includes functions that pertain to the obtaining of a supply, equipment for the State fleet, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement (Contracting) Officer - A person authorized to enter into and administer contracts for an agency and make written determinations with respect to them; it also includes an authorized representative of a procurement officer acting within the limits of authority.

Produced or Manufactured - Processing, developing, or making an item into a new item with a distinct character and use through the application within the State of materials, labor, skill, or other services.

Product - Materials or supplies not including gravel and asphalt.

Professional Services - Professional, technical, or consultant's services that are predominantly intellectual in character, result in the production of a report or the completion of a task, and include analysis, evaluation, prediction, planning, or recommendation.

Program Code - That series of numbers, used in Alaska State Accounting System (AKSAS), to identify both the project phase and the segment of the budget or the support group that incurs the expense.

Project - The total construction, of which the work performed under the Contract Documents is the whole or a part, where such total construction may be performed by more than one Contractor.

Project Costs - Includes, in addition to costs directly related to the project, the sum total of all costs of financing and carrying out the project including, but not limited to, the costs of all necessary studies, surveys, plans and specifications, architectural, engineering, or other special services, acquisition of real property, site preparation and development, purchase, construction, reconstruction and improvement of real property and the acquisition of machinery and equipment as may be necessary in connection with the project; an allocable portion of the administrative and operating expenses of the grantee; the cost of financing the project, including interest on bonds issued to finance the project; and the cost of other items, including any indemnity and surety bonds and premiums on insurance, legal fees, fees and expenses of trustees, depositaries, financial advisors, and paying agents for the bonds issued as the issuer considers necessary.

Notes

Project Manager - The authorized representative of the Contracting Officer who is responsible for administration of the Contract.

Proper Billing - An original invoice or certified copy of an original invoice that includes
(1) the contract number, purchasing document reference number, an itemized description of the goods or services provided, prices for each item or increment of service, extended prices;
(2) the goods or services seller's valid taxpayer identification number, if the goods or services provided are of a type that is required to be included on a United States tax information

return as described in 26 U.S.C. 6041, 6041A, 6042(a), 6044, 6045, 6049(a), 6050A, or 6050N (Internal Revenue Code); and (3) any other documentation required by the contract or purchase order.

Protestor - An actual or prospective bidder, offeror, or contractor who is aggrieved concerning the solicitation or the award of a contract and who files a protest.

Public Construction or Public Works - The on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, highways, or other improvements to real property under contract for the State, a political subdivision of the State, or a regional school board.

Public Interest Finding - The typical document and permanent record used to satisfy the 'findings-of-fact' requirement of AS 19.10.170 (b). DPDR 10.02.013 explains when and how to use the Public Interest Finding.

Purchase Order - A document authorizing a seller to deliver goods or services with payment to be made later and includes an advertising order, delivery order, field purchase order, or State transportation request.

Qualified - Someone who possesses the requisite education, training, skills, or experience to perform the work.

Reasonable and Adequate Procedures - Procedures that ensure fairness to potential Offerors and competition commensurate with the circumstances of the procurement, considering price, mission requirements, and available competition; "reasonable and adequate procedures" includes contacting only one potential offeror in appropriate circumstances.

Recycled Alaska Product - An Alaska product of which not less than 50 percent of the value of the product consists of a product that was previously used in another product, if the recycling process is done in the State.

Regulation - AS 44.62.640(3) provides in part:

"regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of a rule, regulation, order, or standard adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one that regulates only to the internal management of a state agency;

Notes

...

"regulation" includes "manuals," "policies," "instructions," "guides to enforcement," "interpretive bulletins," "interpretations," and the like, that have the effect of rules, orders, regulations, or standards of general application, and this and similar phraseology may not be used to avoid or circumvent this chapter; whether a regulation, regardless of name, is covered by this chapter depends in part on whether it affects the public or is used by the agency in dealing with the public;

Regulatory Requirements - Laws, rules, regulations, ordinances, codes and/or orders.

Reimbursable Services Agreement (RSA) - The contract which is entered into between the Department and another governmental entity, under which the Department performs contract services for the entity and is reimbursed by them. Normally, the requesting Department is the agency to start the procedure by filling out the form.

Repair - As a general guideline, the Alaska Court has defined;
"repair" to include the excavation of mudholes and potholes, the hauling and placing of any additional material or fill on the roadway, the grading or reshaping of newly added materials, and the correction or replacement of damaged culverts, fences, or guardrails. On the other hand, we believe that the grading or smoothing of an existing roadway surface, the straightening or reshaping of shoulders, slopes, and ditches, and the unplugging or cleaning of culverts are merely "maintenance" activities and would not independently be subject to the Little Davis - Bacon Act unless otherwise "substantially related" to ongoing construction or repair."

Request for Quote (RFQ) - Synonymous with the Invitation for Quote (Form 02).

Requirements Contract - A contract that allows for the State to use services or acquire goods in whatever quantities as may be needed. The solicitation for these goods or services usually includes a realistic estimate of the total quantity anticipated.

Resident - A person who establishes residency under AS 01.10.055.

Responsible Bidder - One who is capable financially and competent to complete the job for which he/she is bidding. A responsible bidder is one who is not only financially responsible, but who is possessed of a judgment, skill, ability, capacity, and integrity requisite and necessary to perform a public contract according to its terms. (Black's Law Dictionary)

The unreasonable failure of a bidder or offeror to promptly supply information to an inquiry with respect to responsibility is grounds for a determination of nonresponsibility (AS 36.30.360). Standards for assessing the responsibility of a prospective contractor are found in 2 AAC 12.500.

Responsive Bid - A Responsive Bid is one that materially conforms to the requirements of the solicitation.

Notes

Responsive Bidder - A firm or person who has submitted a bid that conforms in all material respects to the solicitation, i. e. it directly answers all questions and provides all submittals as directed by the bid or proposal.

Alternate bids or proposals are nonresponsive unless the solicitation states that such bids or proposals may be accepted (2 AAC 12.830).

Retainage - Money withheld from the Contractor until completion of a contract or satisfaction of other contingency as evidenced by approval of the applicable pay estimate.

Schedule of Values - The Department's document, submitted by the Contractor and reviewed by the Contracting Officer, that shall serve as the basis for computing payment and for establishing the value of separate items of work which comprise the contract price.

Services - The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance; it does not include employment agreements or collective bargaining agreements.

Scope of Work - The Scope of Work is the product sought by the solicitation as defined in the signed contract documents. This application of using the signed contract documents applies especially in the context of a proposal. Often, when negotiations have been completed on a proposal, the Scope of Work as advertised has attained greater definition. This "greater definition" is important as the basis for what is and is not the scope of work when questions of additional work come into play.

Shall - Synonymous with "must." Used to express a command; mandatory; generally, used in context of directing to do something.

Shop Drawings - All drawings, diagrams, illustrations, schedules and other data that are specifically prepared by or for the Contractor to illustrate some portion of the work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by the Contractor to illustrate material, equipment, fabrication, or erection for some portion of the work.

Should - Should is normally used in an advisory sense; no sanctions or penalties can be used to enforce it.

Single Source Procurement - Authority to utilize/approve the Single Source Procurement method without formal advertisement is provided to the Commissioner of the Department of Transportation and Public Facilities under AS 36.30.300(a). 2 AAC 12.410 explains the conditions for use of Single Source Procurement.

Notes

Small Procurement - A procurement for supplies, services, or professional services that does not exceed an aggregate dollar amount of \$50,000; construction that does not exceed an aggregate dollar amount of \$100,000; or lease of space that does not exceed 3,000 square feet may be made in accordance with regulations adopted by the Commissioner for small procurements.

Small procurements need not be made through competitive sealed bidding or competitive sealed proposals but shall be made with competition that is practicable under the circumstances.

Solicitation - A request for bids, proposals, or quotations.

Specification - A description of the physical or functional characteristics, or of the nature of a supply, service, professional service, or construction project; it may include requirements for licensing, inspecting, testing, and delivery.

Specification - can also mean the written contract documents that govern the methods and materials to be used by the Contractor to construct the project, and that contain the methods of measurement and basis of payment for contract pay items.

Standard Overhead Rate - A charge established for services from an agency that is designed to compensate the agency for administration and support services incidentally provided with the services contracted for.

State Policies & Procedures - Written directives that give guidance in accordance w/ law & regulations.

Subcontractor - A person at any level, other than a prime contractor, who provides materials or services, other than as an employee, to be used in a public construction or public works project.

Substantial Completion - Although not fully completed, the work (or a specified part thereof) has progressed to the point where, in the opinion of the Contracting Officer, as evidence by the Department's written notice, it is sufficiently complete, in accordance with the Contract Documents, so that the work (or specified part thereof) can be utilized for the purposes for which it is intended.

Substantially - Essentially; without material qualification; in substance; materially; in a substantial manner. About, actually, competently, and essentially.

Substantive - An essential part or constituent or relating to what is essential.

Supplemental Agreement - The written agreement to the contract covering a modification to the contract that is outside the scope of the original contract.

Supplementary Conditions - The part of the Contract Documents that amends or supplements the General Conditions.

Notes

Supplies - All property of an agency, including equipment, materials, and insurance; it includes privately owned real property leased for the use of agencies, such as office space, but does not include the acquisition or disposition of other interests in land.

Surety - The corporation, partnership, or individual, other than the Contractor, executing a bond furnished by the Contractor.

Surety Deposit - A surety deposit is usually submitted in lieu of a performance bond, and is an irrevocable letter of credit or cash. The amount of the surety deposit must be as listed in the contract bid/proposal documents. The substitution of a surety deposit must be approved by the Commissioner of the Department of Transportation and Public Facilities prior to its

submittal. An Offeror's failure to provide the surety deposit within the required time is grounds for the State to reject the proposal.

Termination for Cause - Termination of a contract when there is evidence of misconduct, unethical behavior, or blatant disregard of procurement regulations.

Termination of the Contract for Default - If the project director determines that the Contractor has refused to perform the work or has failed to perform the work with such diligence as to ensure its timely and accurate completion, the State may, by providing written notice to the Contractor, terminate the Contractor's right to proceed with part or all of the remaining work.

Time - For tracking of time, the time for various submittals/responses is in calendar days. The 'clock' begins on the date of receipt of the correspondence (i.e. protest, appeal, report, notice, etc.). In accordance with AS 01.10.080, Computation of time, time is computed by excluding the first day and including the last. If the date due falls on a weekend or holiday, the response is due the following business day.

Time And Materials Contracts - In addition to a fixed labor rate, these contracts include separate costs for materials used under the contract. The Contractor is reimbursed on the basis of labor and equipment hours and materials expended, according to a formula established in the specifications. Time and materials is a last resort method of change order.

Transfer of Responsibility Agreement (TORA) - The arrangements between the DOT&PF and a local governmental entity on an agreement for transfer of construction responsibility is set out in the contractual document referred to as a TORA. Essentially, a TORA allows the DOT&PF to provide State funding of projects to the local governmental entity without cumbersome administrative involvement in the project. The DOT&PF has the discretion to negotiate for the inclusion of all or portions of the State Procurement Code in a TORA.

Unauthorized Commitment - An agreement that is not binding solely because the person who made it lacked the authority to enter into that agreement.

Unit Price Work - The work to be paid for based on unit prices.

Wages - Includes fringe benefits.

Notes

Warrant Certificate - The Warrant Certificate is a part of the DOT&PF Construction Contracting Warrant System - a program that implements the Department policy to formalize the delegation of authority for construction related procurements to the lowest possible level to ensure expedience and competence in the construction related procurement and contract administration activities. The Warrant certifies that the holder has met the requirements for procurement authority at a certain level of training, but it does not delegate which procurement activities a warrant holder is authorized to perform (i.e. it does not replace the need for the individual's delegation of authority document).

The Warrant System applies to all employees in the Department who are responsible for encumbering the department via the procurement of professional services and construction

related activities, including the construction of ferries and related equipment. Additionally, the Warrant System applies to those employees of Delegated Operating Agencies who are acting under a delegated authority from the DOT&PF for construction activities for their agencies.

Waiver Request - (Form 25D-026) Popular usage sometimes is that a Waiver Request is synonymous with a Reimbursable Services Agreement. This is not true (see also the definition for an RSA). A Waiver Request is used when requesting a procurement action that falls under the definition of an Alternate Procurement. Procedures for use of the Waiver Request are set out in DPDR 10.01.040.

Work - The act of, and the result of, performing services, furnishing labor, furnishing and incorporating materials and equipment into the Project and performing other duties and obligations, all as required by the Contract Documents. Such work, however incremental, culminates in the entire completed Project, or the various separately identifiable parts thereof.

Working Day - A calendar day during which construction operations could proceed for a major part of a shift, normally excluding Saturdays, Sundays, and State-recognized legal holidays.

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A Small "Construction Related" Procurement Quiz

1. If the total cost of needed construction related items would exceed an individual's delegated purchasing authority, the items may be divided into two or more purchases in order to expedite the acquisition. True ____ False ____
2. An Agency employee who does not have procurement authority may not obligate the Agency to a purchase or a contract under any circumstances. True ____ False ____
3. When obtaining bids, positive responses must be received from at least three vendors before the contract may be awarded. True ____ False ____
4. An award of a contract under these Small "Construction Related" Procurement rules must be made to the lowest responsive and responsible local bidder. True ____ False ____
5. "No Substitute" and "Single Source" mean essentially the same thing. True ____ False ____
6. "Emergency" services work of less than \$ 100,000 does not have to be procured by competitive means. True ____ False ____
7. A good guideline to determine if a situation qualifies as an "Emergency" is whether or not a purchase must be made immediately. True ____ False ____
8. Situations that are determined to be contrary to the public interest of delays in the normal procurement process may be considered an "Emergency." True ____ False ____
9. Emergency services, once performed, do not require any "after the fact" action by the Procurement Agency. True ____ False ____
10. Alaska Bidder's and Product preferences do not apply to construction related procurements under \$ 100,000. True ____ False ____
11. Bid, Payment, and Performance Bonds are not typically used in Small "Construction Related" Procurements. True ____ False ____
12. Under a \$ 25,000 to \$ 100,000 procurement solicitation, the lowest responsive, responsible bid received is \$ 125,000. There is adequate budget for awarding the contract. The Procurement Agency may unilaterally make the award as long as good solicitation records are kept. True ____ False ____
13. Proposers for Small "Construction Related" Procurements need not have a Business License at the time of bid opening to be awarded the contract. True ____ False ____
14. Acceptable justification for a "Single Source" procurement includes that a

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particular item is "preferred," if an adequate number of reasons are stated. True ____ False ____

15. Solicitation for at least three verbal or written quotes is always required for Small "Construction Related Procurements of \$ 5,001 to \$ 100,000. True ____ False ____
16. Agency Procurement Officers have the authority to approve "no substitute" procurements. True ____ False ____
17. A Small "Construction Related" Procurement may be protested but not appealed to the DOT&PF Commissioner. True ____ False ____

Part Two - Multiple Choice

(Select the MOST correct answer)

1. The authority to authorize an employee to make construction related purchases on behalf of the Agency is vested in:
a. the DOT&PF Chief Contracts Officer
b. the Agency Procurement Officer
c. a. and b.
d. none of the above
2. Small Procurements for Construction related projects are divided into _____ procurement categories:
a. 2
b. 3
c. 4
d. 5
e. 6
3. Procurements that are not expected to exceed \$ 5,000 require:
a. adequate and reasonable competition
b. three verbal quotes
c. three written quotes
d. none of the above
4. For procurements expected to fall between \$ 5,001 and \$ 25,000:
a. three verbal quotes are required
b. three written quotes are required
c. the award must be made within the state
d. Alaskan Bidder and Product preferences apply
e. a. and d.
5. An Emergency can be declared for:

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- a. fire, floods, epidemics, riots
 - b. equipment failure, when timely repair is essential
 - c. environmental accidents
 - d. a situation when funds will expire if the purchase is not made by a certain deadline
 - e. a., and c.
 - f. a., b., and c.
 - g. all of the above
6. A "Single Source" procurement:
- a. requires justification on the Waiver Request form (25D-026)
 - b. is also a "no substitute" procurement
 - c. requires only Agency Procurement Officer approval
 - d. requires prior approval from the DOT&PF Chief Contracts Officer, regardless of amount
 - e. a. and c.
 - f. a and d.
 - g. a., b., and d.
7. A "Limited Competition" procurement:
- a. is used when the process of getting bids would take too long.
 - b. should be used rather than declaring an Emergency
 - c. should be used before using a Single Source Procurement
 - d. is used when only a limited number of firms can provide the supplies, or services
 - e. is never used on a small construction related procurement
 - f. requires only Agency Procurement Officer approval
 - g. must be approved in advance by the DOT&PF Chief Contracts Officer, regardless of amount
 - h. d. and f.
 - i. all of the above, except d. and f
8. A "Conditioned Bid" is:
- a. acceptable
 - b. never acceptable
 - c. not acceptable, unless specifically authorized in the invitation to bid
 - d. none of the above

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ANSWERS TO:

A Small "Construction Related" Procurement Quiz

1. **If the total cost of needed construction related items would exceed an individual's delegated purchasing authority, the items may be divided into two or more purchases in order to expedite the acquisition.** True ____ False x
AS 36.30.320 - Procurement requirements may not be artificially divided or fragmented so as to constitute a purchase under this section or to circumvent the source selection procedures required by AS 36.30.100 - 36.30.270.
2. **An Agency employee who does not have procurement authority may not obligate the Agency to a purchase or a contract under any circumstances.** True x False ____
If an employee is not authorized by the appropriate authority to make purchases or awards on behalf of the Agency, the employee is subject to civil and criminal penalties under AS 36.30.930. Additionally, an employee may not exceed their purchasing authority. See DPDR 10.02.023 Investigating Suspected Procurement Code Infractions for helpful information on procurement rules.
3. **When obtaining bids, positive responses must be received from at least three vendors before the contract may be awarded.** True ____ False x
Once the necessary number of contacts has been made, the number of responses is not an issue. However, it is in the best interest of the procurement Agency to receive multiple bids as they provide a good basis for having accomplished receipt of the best, responsive and responsible bid. However, an award may be made when only one responsive bid is received (2 AAC 12.190).
4. **An award of a contract under the Small "Construction Related" Procurement rules must be made to the lowest responsive and responsible local bidder.** True ____ False x
The lowest, responsive responsible bidder receives the contract, regardless of physical location. However, preferences apply to local bidders - AS 36.30.170 states that the procurement officer shall award a contract based on solicited bids to the lowest responsive responsible bidder after Alaskan preferences have been applied. See Chapter 1.
5. **"No Substitute" and "Single Source" mean essentially the same thing.** True ____ False x
"No Substitute" means that only one product or item will be accepted under the bid. "No Substitute" is akin to the "Brand Name" specification (2 AAC 12.100).
"Single Source" procurements are made for supplies, services, professional services or construction, when it is not practicable to award by competitive sealed bidding, competitive sealed proposals or otherwise, and when it is in the best interests of the State (AS 36.30.300 and 2 AAC 12.410). See Chapter 3 for details.
6. **"Emergency" services work of less than \$ 100,000 does not have to be procured by competitive means.** True ____ False x
It depends on which type of "Emergency" is occurring. Generally, emergency purchases may be made by competition that is practicable under the circumstances. Cost is not an issue. When time permits (i.e. an Emergency that does not require action within 72 hours of discovery), oral or written solicitation to multiple vendors should be made as that is practicable under the circumstance. Look to 2 AAC 12.450(a), Chapter 3, and DPDR 10.01.0040 for guidance.

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7. **A good guideline to determine if a situation qualifies as an Emergency is whether or not a purchase must be made immediately.** True ___ False x

The procurement Agency may have an immediate need to acquire goods or services that does not meet the definition of an Emergency and thus may not be procured under this method. Emergency procurements are allowed only when:

- there exists a threat to public health, welfare, or safety;
- a procurement through competitive means is impracticable or contrary to the public interest; or
- necessary to protect public or private property.

8. **Situations that are determined to be contrary to the public interest because of delays in the normal procurement process may be considered an "Emergency."** True ___ False x

The failure to adequately plan for procurement needs that may, as a result end in an emergency situation, is not a legitimate reason for using the Emergency procurement method.

9. **Emergency services, once performed, do not require any "after the fact" action by the Procurement Agency.** True ___ False x

When an Emergency action is required within 72 hours of discovery, the Agency procurement officer must make a written determination of the emergency, stating in detail the factual basis for that finding. Immediately upon completion of the Emergency procurement, the written determination, along with copies of invoices from the vendor, must be forwarded to the DOT&PF Chief Contracts Officer. And certain additional reporting requirements must be met at the end of the fiscal year (2 AAC 12.460). See Chapter 1.

10. **Alaska Bidder's and Product preferences do not apply to construction related procurements under \$ 100,000.** True ___ False x

Except for projects that contain Federal-aid funds, all small construction procurements are subject to applicable Alaska Bidder and Alaskan product preferences. See Chapter 1.

11. **Bid, Payment, and Performance Bonds are not typically used in Small "Construction Related" Procurements.** True x False ___

Bid, Payment, and Performance Bonds are only required on construction related projects in excess of \$ 100,000. However, the Procurement Agency may call for bonding in the bid specifications at its option. Payment and Performance Bonds are a good idea when a project is estimated to be above \$ 80,000 just as a good rule of thumb. Subsequent change orders may push the total contract amount over \$ 100,000 before the project is completed. See Chapter 1.

12. **Under a \$ 25,000 to \$ 100,000 procurement solicitation, the lowest responsive, responsible bid received is \$ 125,000. There is adequate budget for awarding the contract. The Procurement Agency may unilaterally make the award as long as good solicitation records are kept.** True ___ False x

An award that would exceed the upper limit of the small procurement can only be made with prior approval of the DOT&PF Commissioner. See Chapter 1.

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13. Proposers for Small "Construction Related" Procurements need not have a Business License at the time of bid opening to be awarded the contract. True x False x

The answer can be either true or false, depending on the funding source. See Chapter 1.

On State Funded Projects:

For State funded projects, the DOT&PF has a precedent history of the de facto adoption of DOA Administrative Manual, Section 81.120 (page 15 of 44) as guidance on what constitutes an Alaska business license. A cancelled check demonstrating payment of the Alaska business license fee is one form that suffices.

Other acceptable forms for the business license requirement include: a sworn affidavit that the offeror applied and paid for the Alaska business license; other forms of evidence acceptable to the Department of Law.

If the proposer does not have, or cannot prove that he/she has constructively applied for the Alaska business license prior to the opening of the quote, they must be determined to be non-responsive.

AS 36.30, the State Procurement Code, specifically **AS 36.30.170** and **AS 36.30.210**, apply and provide the basis for making the eventual responsiveness determination on a quote.

On Federally Funded Projects:

For federally funded (FHWA & FAA) construction projects, **49 CFR 18.36(b) Procurement standards (1)** reads:

"Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section."

However, **23 CFR 635.110 Licensing and qualification of contractors, (c)**, prevails over **49 CFR 18.36(b)** with the pronouncement that:

"No contractor shall be required by law, regulation, or practice to obtain a license before submission of a bid or before the bid may be considered for award of a contract."

Regardless of the funding source;

The Alaska business license must be in the name of the proposer. A subsidiary of a business that has an Alaska business license does not qualify to bid unless they are under a Joint Venture Partnership or the actual proposer has met the license requirements as herein stated. A subsidiary proposer cannot rely on the parent company's Alaska business license as being sufficient to meet the licensing requirement.

14. Acceptable justification for a "Single Source" purchase includes that a particular item is "preferred," if an adequate number of reasons are stated.

True _____ False x

A Single Source procurement is the restriction of the purchase of supplies, services, or professional services to one potential vendor or contractor because no other source is suitable or acceptable to meet the need when it is not practicable to award a contract by competitive sealed bidding, or competitive sealed proposals. These parameters must be met and factually explained in the Waiver Request that accompanies all Single Source determinations. See Chapter 3.

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15. Solicitation for at least three verbal or written quotes is always required for Small "Construction Related" Procurements of \$5,001 to \$100,000. True x False
And, once the necessary number of contacts has been made, the number of responses is not at issue. However, it is in the best interest of the Agency to receive multiple bids for obvious reasons, and they provide a good basis for a determination on having accomplished receipt of the best responsive and responsible bid.
16. Agency Procurement Officers have the authority to approve "no substitute" procurements. True False x
A "no substitute" procurement is more properly known as a "Brand Name" procurement and is governed by 2 AAC 12.100. Because a Public Interest Finding (PIF) is required when making a Brand Name procurement, and the procurement is a deviation from standard procurement procedures, the DOT&PF Commissioner (or designee, the DOT&PF Chief Contracts Officer) is the only entity who can approve such procurements.
17. A Small "Construction Related" Procurement may be protested but not appealed to the DOT&PF Commissioner. True x False
A small construction procurement solicitation and the award may be protested. But, the protest decision by the Procurement Officer may not be appealed to the DOT&PF Commissioner. See Chapter 1.

Part Two - Multiple Choice

1. The authority to authorize an employee to make construction related purchases on behalf of the

Agency is vested in:

- a. the DOT&PF Chief Contracts Officer
- b. the Agency Procurement Officer
- c. a. and b.
- d. none of the above

Answer: The flow of delegation moves from the DOT&PF Commissioner's Office (DOT&PF Chief Contracts Officer) to the Procurement Agency. The Procurement Agency has defined authorities and responsibilities to sub-delegate procurement authority within its organization.

2. Small Procurements for Construction related projects are divided into _____ procurement categories:

- a. 2
- b. 3
- c. 4
- d. 5
- e. 6

Answer: The three categories are:

Less than \$5,000;
From \$5,001 to \$25,000;
From \$25,001 to \$100,000

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3. Procurements that are not expected to exceed \$ 5,000 require:

- a. adequate and reasonable competition
- b. three verbal quotes
- c. three written quotes
- d. none of the above

Answer: See 2 AAC 12.400(b)(1) and Chapter 2.

4. For procurements that are expected to fall between \$ 5,001 and \$ 25,000:

- a. three verbal bids are required
- b. three written bids are required
- c. the award must be made within the state
- d. Alaskan Bidder and Product preferences apply
- e. a. and d.

Answer: See 2 AAC 12.400(c)(1)(A), 2 AAC 12.400(f) and Chapters 1 and 2.

5. An Emergency can be declared for:

- a. fire, floods, epidemics, riots
- b. equipment failure, when timely repair is essential
- c. environmental accidents
- d. a situation when funds will expire if the purchase is not made by a certain deadline
- e. a. and c.
- f. a., b., and c
- g. all of the above

Answer: See Chapter 3.

6. A "Single Source" procurement:

- a. requires justification on the Waiver Request form (25D-026)
- b. is also a "no substitute" procurement
- c. requires only Agency Procurement Officer approval
- d. requires prior approval from the DOT&PF Chief Contracts Officer, regardless of amount
- e. a. and c.
- f. a and d.
- g. a., b., and d.

Answer: See Chapter 3.

7. A "Limited Competition" procurement:

- a. is used when the process of getting bids would take too long.
- b. should be used rather than declaring an Emergency
- c. should be used before using a Single Source Procurement
- d. is used when only a limited number of firms can provide the supplies or services
- e. is never used on a small construction related procurement

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- f. requires only Agency Procurement Officer approval
- g. must be approved in advance by the DOT&PF Chief Contracts Officer, regardless of amount

h. d. and f

- i. all of the above, except d., and f

Answer: See Chapter 3.

8. A "Conditioned Bid" is:

- a. acceptable
- b. never acceptable
- c. not acceptable, unless specifically authorized in the invitation to bid
- d. none of the above

Answer: Conditioned bids are not acceptable, unless specifically authorized in the invitation to bid. The bid should be immediately rejected as non-responsive and non-responsible. Review AS 36.30.160 (b), AS 36.30.240, AS 36.30.340, AS 36.30.350, 2 AAC 12.270, and 2 AAC 12.870 for further applicability.